No. 89-1166-CFX
Status: GRANTED

Title: Arthur Groves, Bobby J. Evans and Local 771, International Union UAW, Petitioners
v.
Ring Screw Works, Ferndale Fastener Division

Docketed:
January 22, 1990

Court: United States Court of Appeals for the Sixth Circuit

See also:
89-1060

Counsel for petitioner: Rossen,Jordan, Gold,Laurence

Counsel for respondent: Page,Terence V.

Jan. 21, 1990 was SUNDAY

Entry	Date	Note	Proceedings and Orders
1	Jan 22 1990	G	Petition for writ of certiorari filed.
3	Feb 20 1990		Brief of respondent Ring Screw Works in opposition filed.
2	Feb 21 1990		DISTRIBUTED. March 16, 1990
4	Mar 6 1990	X	Reply brief of petitioners Arthur Groves, et al. filed.
5	Mar 19 1990		Petition GRANTED.
			**********
9	May 8 1990		Order extending time to file brief of petitioner on the merits until May 14, 1990.
10	May 14 1990		Joint appendix filed.
11	May 14 1990		Brief of petitioners Arthur Groves, et al. filed.
13	May 24 1990		Order extending time to file brief of respondent on the merits until July 6, 1990.
14	Jul 6 1990		Brief of respondent Ring Screw Works filed.
15	Jul 6 1990		Brief amicus curiae of Chamber of Commerce of the United States filed.
16	Jul 6 1990		Brief amicus curiae of Motor Vehicle Manufacturers Assn. of the U.S. filed.
17	Jul 23 1990		SET FOR ARGUMENT WEDNESDAY, OCTOBER 10, 1990. (2ND CASE)
18	Jul 26 1990		CIRCULATED.
19	Aug 8 1990	X	Reply brief of petitioners Arthur Groves, et al. filed.
20	Aug 23 1990		Record filed.
		*	Record received from USDC E.D. Michigan. (Not certified).
21	Aug 24 1990		Record filed.
		*	Certified original record received.
22	Oct 10 1990		ARGUED.

89-1166

No. ———

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS and
LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

When a collective bargaining agreement between an employer and a union subject to § 301 of the Labor-Management Relations Act of 1947 does not provide for final and binding arbitration to resolve contract disputes, but does permit the parties to resort to economic weapons over such disputes—and is silent on the contract's enforceability in court—is judicial enforcement of the contract in a § 301 suit thereby precluded?

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IN THE

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No. ———

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,
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v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Arthur Groves, Bobby J. Evans and Local 771, International Union UAW, the plaintiffs in the district court and the appellants in the court of appeals, hereby petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Sixth Circuit in *Groves* v. *Ring Screw Works, Ferndale Fastener Div.*, 6th Cir. Nos. 88-1452, 88-1579 (Aug. 16, 1989).

OPINIONS BELOW

The court of appeals' opinion is reported at 822 F.2d 1061 and is reproduced at pp. 1a-12a of the appendix to this *certiorari* petition (hereafter "Pet. App.")

The district court's orders granting the defendant's motions for summary judgment are unreported and are reproduced at Pet. App. 16a-29a.

JURISDICTIONAL STATEMENT

The court of appeals' opinion was entered on August 16, 1989. Pet. App. 1a. That court's order denying a timely petition for rehearing was entered on October 23, 1989. Pet. App. 15a. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves § 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, which provides in pertinent part as follows:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Ring Screw Works ("the Company") discharged employees Arthur Groves and Bobby J. Evans; Groves for alleged absenteeism and Evans for alleged falsification of company records. Both Groves and Evans were represented for purpose of collective bargaining by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 771 ("UAW" or "Union"). And, at the time in question Ring Screw Works and UAW had negotiated and were parties to collective bargaining agreements covering the Company's employees. Pet. App. 2a.

The collective bargaining agreements provide, *inter alia*, that Ring Screw Works may discharge employees only for "just cause." In addition the agreements include a grievance procedure which provides that "[s]hould a difference arise between the Company and the Union or its members employed by the Company, as to the

meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows." The grievance procedure then sets forth a four-step process, beginning with discussions between "the employee, his stewart and the foreman of his department" and culminating in Step 4 which provides in full that "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only." Pet. App. 3a-4a, n.2.

Where "[a]n agreement is reached between the Company and the Shop Committee under the grievance procedure" that agreement is "binding." Where all negotiations have failed through the grievance procedure, the Union is effectively released of its no-strike pledge and the Company of its "no-lockout pledge."[1] The collective bargaining agreement is silent on the parties' right to sue over alleged conduct breaches. Pet. App. 3a-4a.

Following their discharges, both Evans and Groves sought their Union's assistance in regaining their jobs. Discussions were conducted pursuant to the collective bargaining agreement's grievance procedure. Those discussions did not result in any settlement or compromise of the grievances. The Company refused UAW's offer to take both cases to binding arbitration. And the Union did not choose to invoke its option to strike. Pet. App. 4a-5a.

Evans and Groves, joined by their Union, filed suit in state court to enforce the "just cause" provision of the collective bargaining agreements. Ring Screw Works removed both cases to federal district court invoking that court's jurisdiction under the federal labor law. In both cases, the district court granted summary judgment to the Company on the ground that plaintiffs were

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[1] The collective bargaining agreement covering the Evans—but not the Groves—dispute also provided that "unresolved disputes shall be handled as set forth in [the no strike clause]." Pet. App. 4a.

bound by the "result" of the grievance procedure and therefore could not seek judicial enforcement of the contract terms in the absence of proof that the Union violated its duty of fair representation. The Sixth Circuit affirmed on the authority of its earlier ruling in *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982). Pet. App. 4a-8a. The panel hearing this case noted, however, that "other courts in comparable circumstances have reached a decision contrary to *Fortune*" citing *Dickeson* v. *DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987), and that "[w]ere we deciding the issue with a clean slate, we might be disposed to adopt the rationale of *Dickeson*." Pet. App. 8a, 11a.

REASONS FOR GRANTING THE WRIT

Congress' purpose in adding § 301 of the Labor Management Relations Act of 1947 to the federal labor law was to promote labor peace by assuring that collective bargaining agreements are enforceable in court. Nonetheless, a deep division has developed in the lower courts as to whether collective bargaining agreements which are silent on judicial enforcement and which establish a grievance procedure terminating *not* in a peaceful and final method of determining whether there has been a contract breach but in an option to strike and to lockout are judicially enforceable.

The Fifth and Sixth Circuits have held that under such collective bargaining agreements resort to economic weapons is the exclusive remedy. The rule in the Seventh, Ninth and Tenth Circuits is that such agreements are enforceable in court. That is also the view of the Michigan Supreme Court (under its parallel jurisdiction to hear LMRA § 301 claims).

As the decision below re-emphasizes, only this Court can reconcile this otherwise irreconcilable, longstanding division in the courts of appeals. LMRA § 301 occupies a central place in the national labor policy. This Court has

therefore repeatedly stressed the importance of maintaining a uniform federal law of collective bargaining agreements. *See, e.g., Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985) ("The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation.") All that being so, this *certiorari* petition should be granted.

I. THE DECISION BELOW SQUARELY CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEALS.

The decision below is, as the Sixth Circuit stated, Pet. App. 7a, in accord with that of the Fifth Circuit in *Haynes* v. *United States Pipe & Foundry*, 362 F.2d 414 (5th Cir. 1966). However, as the court below expressly "recognize[d], other courts in comparable circumstances have reached a decision contrary to" the decisions in the Fifth and Sixth Circuits, citing *Dickeson* v. *DAW Forest Products Co.*, 827 F.2d 627 (9th Cir. 1987). Pet. App. 8a.

In *Dickeson*, which involved an agreement that was identical in all pertinent respects to that herein,[2] the Ninth Circuit ruled:

> If the grievance procedure is deemed final, the company's determination is binding, and the Union's exclusive remedy is to strike. In a case such as this

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[2] *See* 827 F.2d at 629:

> The agreement's grievance provision establishes a four-level procedure that culminates in a hearing before two company officials and a union representative. After the final meeting, the company must provide the Union with its determination in writing. If the Union disagrees with the company's decision, the Union is permitted to call a strike. The collective bargaining agreement provides no other remedy. Further, the collective bargaining agreement does not state expressly whether the grievance procedure is final. Collective Bargaining Agreement, Art. 18.

when the contract is silent as to whether the grievance procedure is final and the only remedy is to strike, we are very hesitant to conclude that the parties intended that the procedure be final. In *Associated General Contractors* v. *Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), the Seventh Circuit was required to interpret a similar grievance procedure. It concluded the agreement was not final. We agree. *See also S.J. Groves & Sons Co. v. International Brotherhood of Teamsters*, 581 F.2d 1241 (7th Cir. 1978). Although the right to strike is protected, it is not a preferred method for resolving differences. Prohibiting access to the courts bypasses an opportunity to use reason in favor of "economic warfare." *Associated General Contractors*, 486 F.2d at 976. Although parties to a collective bargaining agreement may choose to designate strikes as the sole means of objecting to management decisions, we think they must do so expressly before we may find judicial divestment. No preference need be accorded strikes as a noble dispute resolution mechanism. Accordingly, we conclude that the grievance procedure was not intended to be final. Having exhausted the administrative process, Dickeson may bring suit against DAW under section 301. [827 F.2d at 629-30.]

The decision below conflicts also with the Seventh Circuit decisions that were cited with approval in *Dickeson*. In *Associated General Contractors* v. *Illinois Conference of Teamsters* ("*Teamsters*"), *supra*, then-Judge Stevens reasoned:

> Unquestionably "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." See *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566. But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do. . . . [W]e did not, and do not now, construe the agreement as requiring economic warfare as the exclusive or even as a desirable method for settling deadlocked grievances. The plain language of the statute protects the right to strike, but there is no plain language in the contract compelling the parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than this. [486 F.2d at 976, footnote omitted.]

The Tenth Circuit had reached the same conclusion in an early case, *United Brotherhood of C. & J.* v. *Hensel Phelps Const. Co.*, 376 F.2d 731 (10th Cir.), *cert. denied*, 389 U.S. 952 (1967) ("*Carpenters*"):

> The contract does not contain a "no strike" clause, and, as we have seen, it does not provide for binding and compulsory arbitration. Thus after the contractual dispute procedure proved ineffective to resolve the dispute, the parties were free to pursue their other remedies. The device selected by the union was a work stoppage. Phelps [the employer] later has sought its remedy in the United States District Court. With different facts the forums selected could be reversed, Phelps imposing a lockout and the union bringing suit. [376 F.2d at 737.] [3]

The decision below is also squarely inconsistent with that of the Michigan Supreme Court in a case involving the same employer, and the same contract language. That court held that the grievance procedure at issue does *not* prevent judicial enforcement of the "just cause" clause of the contract at the behest of the employee where the union membership had voted not to strike. *Breish* v.

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[3] *See also id.*: "When the dispute is one arising within the provisions of the contract, it is the function of the courts, under § 301 to adjudicate the dispute, absent provisions in the contract for binding arbitration."

Ring Screws Works, 397 Mich. 586, 248 N.W. 2d 526 (1976).[4]

II. THE DECISION BELOW IS INCONSISTENT WITH THE NATIONAL LABOR POLICY.

In concluding that the agreements here "do bring about an inference that a strike, or other job action, is the perceived remedy for failure of successful resolution of a grievance absent agreed arbitration," the court below acknowledged that "[s]uch resolution, by work 'stoppage or other interference' is not a happy solution from a societal standpoint of an industrial dispute, particularly as it relates to the claim of a single employee that he has been wrongfully discharged." Pet. App. 10a-11a. And, as we have seen, the Seventh, Ninth and Tenth Circuits, while recognizing that the parties may agree that use of economic force is the exclusive method for resolving their contract disputes, have insisted upon express contractual language to achieve that result on the ground that LMRA § 301 represents a determination that resort to the courts is preferable to economic warfare. *See* pp. 5-7, *supra*. Only the latter approach is consistent with the LMRA.

Textile Workers v. *Lincoln Mills*, 353 U.S. 448 (1957) explicated Congress' objectives in adopting LMRA § 301, which, of course, provides for judicial enforcement of agreements between employers in commerce and labor organizations. Not only were unions to be bound to such agreements, but

> there was also a broader concern—a concern with a procedure for making such agreements enforceable in the courts by either party. At one point the [1947] Senate Report, . . . p. 15, states, "We feel that the aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made . . . .'" [353 U.S. at 453.][5]

And the *Lincoln Mills* Court continued: "Congress was also interested in promoting collective bargaining that ended with agreements not to strike." *Id. See also id.* at 454, quoting S. Rep. 105, 80th Cong., 1st Sess., p. 16 (1947). In short, the statute "expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." 353 U.S. at 455.

Lincoln Mills also establishes that the courts must look to these congressional policies in determining whether an agreement is to be construed to preclude a judicial remedy merely because the parties have reserved the right to use economic weapons to resolve their contractual disputes. See 353 U.S. at 457. And it is clear from the foregoing that it is *contrary* to the policy underlying LMRA § 301 to so interpret agreements which are silent on the subject of judicial enforcement.

In reaching the opposite result, the Fifth Circuit, in *Haynes*, *supra*, proceeded from another congressional policy, explicitly stated in LMRA § 203(d), "that in settling grievance disputes, the Act contemplated that the method agreed upon by parties to collective bargaining agreements should be the means of settling such dis-

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[4] Here, as in *Teamsters* and *Carpenters*, the union is suing to enforce its agreement. Thus, the present case does *not* raise the separate, and logically subsequent, issue implicit in *Dickeson* and expressly decided in favor of suit in *Breish*: *viz.*, whether an action by an employee *alone* will lie where the union does not exercise its strike option.

[5] *See also id.* at 454:

> To repeat, the Senate Report, *supra*, p. 17, summed up the philosophy of § 301 as follows: "Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace."

putes." 362 F.2d at 416. That court identified "three available forums for the resolution of disputes—contractual grievance procedure such as arbitration, or the court, or the picket line—" and observed that "the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement." *Id.* *Haynes* drew from this Court's decisions the "common theme . . . that when a dispute arises within the scope of a collective bargaining agreement, the parties are relegated to the remedies which they provided in their agreement." *Id.* at 417.

These premises do not support, let alone compel, that court's conclusion:

> The fact of the matter here is that the union processed appellant's grievance up to the point of striking. The denial of his claim then became final. We believe the law to be that his claim was thereby barred. The court has jurisdiction. *Smith* v. *Evening News Association*, *supra*, [371 U.S. 195 (1962)]. The action under the grievance procedure, here a final decision under the terms of the agreement, may be asserted in bar as an affirmative defense. [362 F.2d at 418.]

Haynes fails to explain the basis for its critical assertion that the employee's claim "became final", in the sense LMRA § 203(d) uses that term, when the union does not choose to exercise its right to strike under the agreement. 362 F.2d at 416-417. And, it is precisely in this respect that the rule in the Fifth and Sixth Circuits is contrary to the decisions of the Seventh, Ninth and Tenth Circuits.

There is, we submit, no contradiction whatsoever between the policy in favor of judicial enforcement stated in LMRA § 301 and the policy in favor of "[f]inal adjustment by a method agreed upon by the parties" stated in § 203(d). Contrary to *Haynes*, there is nothing in § 203(d) which expresses a preference for "the picket line" over "the court," 362 F.2d at 416. The congressional policies underlying both § 203(d) and § 301 clearly bespeak a preference in favor of the judicial remedy over the use of economic weapons.

In a case such as this one, there has been no "final adjustment" in accordance with the contract of the question of whether Ring Screw Works violated the collective bargaining agreement's "just cause" provision, only an indeterminate failure to adjust that grievance. And the point of § 203 as a whole, like that of § 301, is "to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes." *See* § 203(a). It is thus paradoxical to draw the lesson from § 203(d) that the courts are required to read collective bargaining agreements that merely permit strikes and lockouts as requiring resort to that option and as precluding a § 301 suit to enforce the agreement according to its terms.

CONCLUSION

For the foregoing reasons, this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

Nos. 88-1452, 88-1579

ARTHUR GROVES and LOCAL 771, UAW (88-1452);
BOBBY J. EVANS and LOCAL 771, UAW (88-1579),
Plaintiffs-Appellants,

v.

RING SCREW WORKS, a Michigan Corporation,
FERNDALE FASTENER DIVISION,
Defendant-Appellee.

Argued Feb. 21, 1989

Decided Aug. 16, 1989

Rehearing and Rehearing En Banc
Denied Oct. 23, 1989

William Mazey (argued), Rothe, Mazey, Mazey & Hamburger, Southfield, Mich., for Arthur Groves, Bobby J. Evans, and Local 771, UAW, Plaintiffs-Appellants.

Richard M. Tuyn (argued) and Terrance V. Page, Clark, Hardy, Lewis, Pollard & Page, Birmingham, Mich., for Ring Screw Works, a Michigan Corp., Ferndale Fastener Div., defendant-appellee.

Before WELLFORD, NELSON and NORRIS, Circuit Judges.

WELLFORD, Circuit Judge.

We are concerned with two cases, consolidated on appeal, in which the district courts dismissed employee claims under § 301 of the Labor Relations Management Act holding that the collective bargaining agreement (CBA) provided that a strike or other job action was the exclusive means of grievance resolution. The applicable CBAs provided that the parties were bound if an agreement was reached at some stage of the prescribed process. If the grievance procedure failed to resolve the grievance, the union might strike, but exhaustion of the contract procedure was required before the union could take such action.

The relevant facts are not disputed. Ring Screw Works (Ring) employed both plaintiffs, Arthur Groves and Bobby J. Evans. Ring terminated Groves for allegedly excessive, unexcused absences. Ring dismissed Evans for allegedly falsifying company records. Groves and Evans, on the other hand, contend that Ring fired them without due cause and violated the CBAs. Groves and Evans brought separate lawsuits against Ring in state court for wrongful discharge. The union joined as plaintiff in both cases. Ring filed a petition for removal in both cases, claiming that the causes of action could have been brought under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185.[1] Ring filed motions for summary judgment in both cases, which the district judge granted, holding that the plaintiff could not bring a cause of action under § 301 without alleging that their union breached its duty of fair representation. We affirm.

The issue in both cases is whether the grievance procedures contained in the CBAs were the exclusive means for resolving disputes, thus precluding a direct action for

[1] Section 301 preempts state law to the extent the action involves an interpretation of the CBA. *See, e.g., Allis-Chalmers v. Lueck*, 471 U.S. 202, 213, 105 S.Ct. 1904, 1912, 85 L.Ed.2d 206 (1985). *See also Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988).

breach of contract absent an allegation that the union breached its duty of fair representation.

Both CBAs prescribed a multi-step grievance procedure in which the employee, management representatives, and union representatives were called upon to resolve the dispute.[2] If the parties are unable to resolve the griev-

[2] The CBA, by which Groves was bound, stated:

Section 1. Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:

Step. 1. Between the employee, his steward and the foremen of his department. If a satisfactory settlement is not reached then

Step 2. Between the Shop Committee, with or without the employee, and the Company Management. If a satisfactory settlement is not reached then

Step 3. The Shop Committee and/or the Company may call the Local Union President and/or the International Representative to arrange a meeting in an attempt to resolve the grievance. If a satisfactory settlement is not reached then

Step. 4. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. *This may include arbitration by mutual agreement in discharge cases only.*

Section 2. Grievances alleging an unjust or discriminatory discharge must be submitted in writing to the foreman involved within two (2) working days of the discharge. The Company must render a disposition within four (4) working days of the receipt of such grievance.

Section 3. The Company shall not consider the grievances of any individual employee unless it is presented in writing under the grievance procedure within five (5) working days of their occurrence, excepting discharges which are governed by the preceding section. The Company will render a disposition within five (5) working days of receipt of such grievance.

Section 4. Members of the Shop Committee and chief stewards shall be allowed the necessary time to investigate and adjust grievances promptly.

Section 5. An agreement reached between the Company and the Shop Committee under the grievance procedure shall be

ance, binding arbitration is available only "by mutual agreement in discharge cases only."

In addition, Groves' CBA included this no strike clause:

> The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, or production at the Company's plant during the terms of this agreement *until all negotiations have failed through the grievance procedure set forth herein.* Neither will the Company engage in any lockouts until the same grievance procedure has been carried out.

Evans' CBA contained the same no strike clause but also provided that "[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in [the no strike clause]."

In both cases the district court construed the CBAs to provide that if a grievance were not resolved through the grievance procedures, the union's only option was to strike. In the case of Evans, a strike vote was taken by the unit members at the plant where Evans was employed, but the vote failed to carry the required two-thirds majority; however, in Groves' case, no strike vote was taken. In both cases the district court concluded by summary judgment that plaintiffs were found by the results of the grievance procedure and/or the strike vote because the grievance procedures were exclusive, and therefore could not bring a § 301 cause of action without

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binding on all employees affected and cannot be changed by any individual.

(Emphasis added). The CBA by which Evans was bound, contained similar terms but also included express time limitations and writing requirements.

alleging that the union breached its duty of fair representation.

The question before the court is whether an employee and union may bring a § 301 cause of action against the employer for discharge in violation of the CBA if: (1) the union did not breach its duty of fair representation; (2) the CBA has a grievance procedure which was exhausted without reaching a settlement; (3) the CBA permits binding arbitration only with the consent of both parties as tc which the employer refused arbitration; and (4) the SBA permits a strike when the grievance procedure fails to produce an agreement or arbitration.

Section 301 of the Labor Management Relations Act (LMRA) provides:

> Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

Section 301 "is not to be given a narrow reading." *Smith v. Evening News Association*, 371 U.S. 195, 199, 83 S.Ct. 267, 269, 9 L.Ed.2d 246 (1962). Individual suits may be brought under § 301; actions thereunder are not constricted to those brought by labor unions. *Id.* at 200, 83 S.Ct. at 270. An employee may bring an action under § 301 against his employer if he has been dismissed in violation of the CBA. *Id.* at 195, 83 S.Ct. at 267. However, courts have consistently favored the resolution of labor disputes through arbitration where a CBA so provides. *See United Steel Workers of America v. American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4

L.Ed.2d 1403 (1960); *United Steel Workers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steel Workers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). Therefore, an employee is required to exhaust any grievance procedure contained in his CBA before initiating an action under § 301 against his employer. *Clayton v. International Union*, 451 U.S. 679, 101 S.Ct. 2088, 68 L.Ed.2d 538 (1981); *Anderson v. Ideal Basic Industries*, 804 F.2d 950, 952 (6th Cir. 1986); *see also Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965). In addition, if a CBA contains exclusive and final procedures for the resolution of employee grievances, unlike the agreement in *Smith*, the employee's ability to bring an action under § 301 will be severely restricted. *See Smith*, 371 U.S. at 196 nn. 1 & 9, 83 S.Ct. at 268 nn. 1 & 9; *see also U.S. Bulk Carriers v. Arguelles*, 400 U.S. 351, 358, 91 S.Ct. 409, 413, 27 L.Ed.2d 456 (1971) (Harlan, J., concurring); *Ames v. Westinghouse Elec. Corp.*, 864 F.2d 289, 292 (3d Cir.1988) ("If, however, the collective bargaining agreement contains procedures for settlement of disputes through grievance and arbitration, these contractual remedies are binding on individual employees . . ."); *Hart v. Nat'l Homes Corp.*, 668 F.2d 791, 793 (5th Cir.1982).

Plaintiffs concede the exhaustion requirement and claim to have in fact exhausted the avenues of relief available to them under the grievance procedures. However, plaintiffs claim that the failure to reach an agreement after exhausting the grievance procedure allows them to proceed in federal court on a straight § 301 action against their employer.

We cannot agree. This court has previously concluded that failure to reach an agreement through a similar grievance procedure nevertheless produced a final decision and such procedure was deemed exclusive. *See For-*

tune v. Nat'l Twist Drill & Tool Division, Lear Siegler, Inc. 684 F.2d 374 (6th Cir.1982). In *Fortune*, two employees brought an action seeking federal court review of their discharges by their employer.

> [I]n each instance, the grievance was filed concerning each discharge and was prosecuted by the union through a four-step grievance procedure without any agreement being reached. . . . [T]he labor contract provided that the union could strike if "all negotiations have failed through the grievance procedure." In each of these instances, while the final decision was that of management, since the labor management contract did not provide for arbitration, the union's only recourse in further prosecuting the grievance would be to strike. In each instance, the membership of the union voted not to strike.

Id. at 375. In *Fortune*, we relied upon *Haynes v. United States Pipe and Foundry Co.*, 362 F.2d 414 (5th Cir. 1966), in holding that "[w]here the parties fail to agree upon arbitration as a method of breaking a deadlocked dispute over a grievance, we are cited to no provision of federal law which gives the federal courts the power to make a decision for the parties." *Fortune*, 684 F.2d at 375.

In *Fortune*, the author of that opinion pointed to no specific language in the CBA which indicated that the result of the grievance procedure was necessarily intended to be final. In *Haynes*, on the other hand, the CBA included language indicating that the result of the fourth step would be final. *Haynes*, 362 F.2d at 415. Plaintiffs have stated that "both agreements have grievance procedures that are similar but not identical. The differences are immaterial to the issue in the case."[3] The pertinent

[3] Defendant does not challenge this assertion. There is a difference between the two CBAs which might have been deemed material in this controversy. Article IV, Section 4 of Evans' CBA provides

language of the CBA states: "Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it," followed by the grievance and then the step procedures hereinabove set out. The union may strike only if "all negotiations have failed through the grievance procedure set forth herein." The agreement does not expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration. We agree with defendant that *Fortune* applies and precludes plaintiffs from bringing a cause of action under § 301 against Ring for breach of the CBA. *Fortune* is especially similar to the *Evans* case in that a strike vote was taken and failed. However, we do not believe this fact to be material under *Fortune*.

We recognize that other courts in comparable circumstances have reached a decision contrary to *Fortune*. *See Dickeson v. DAW Forest Products Co.*, 827 F.2d 627 (9th Cir.1987) (contract grievance procedure silent as to whether final; held strike remedy not exclusive and employee could sue in federal court for improper discharge); *Internat'l Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Roblin Industries, Inc.*, 561 F.Supp. 288 (W.D. Mich.1983) (finding similar CBA did not produce final result, distinguishing *Fortune*). These courts were unwilling to conclude that a strike was the employees' only resort following an unsuccessful grievance prosecution unless the CBA specifically provided such.

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that an "unresolved grievance *shall* be handled as set forth in Article XVI, Section 7," which in turn refers to a right to strike if "all negotiations have failed through the grievance procedure." (emphasis added). This might well infer an exclusive remedy of a strike, lockout, or other job action. Defendant did not argue this point in the district court, and we do not reach a decision on this basis. We recognize, however, that *Fortune* might require both CBAs to be interpreted similarly.

Plaintiffs also rely upon *Breish v. Ring Screw Works*, 397 Mich. 586, 248 N.W.2d 526 (1976), for the proposition that federal labor policy requires that the final step in a grievance procedure must be adequate to provide a procedurally fair decision. We did not approve the *Breish* rationale in *Fortune*, 684 F.2d at 375. Federal labor policy "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." *United Steel Workers v. American Manufacturing Co.*, 363 U.S. 564, 566, 80 S.Ct. 1343, 1345, 4 L.Ed.2d 1403 (1960), *quoted in Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562, 96 S.Ct. 1048, 1055, 47 L.Ed.2d 231 (1976). A union and an employee may choose to designate strikes and lockouts as a sole means of resolving disputes if they do so clearly and specifically. *Dickeson*, 827 F.2d at 629. *See also Huffman v. Westinghouse Electric Corp.*, 752 F.2d 1221, 1224-26 (7th Cir.1985) (rejecting *Breish* and citing *Fortune*).

Plaintiffs also rely principally upon two Supreme Court cases, *Smith v. Evening News Association*, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962) and *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).[4] The latter reiterates the individual employee's right, if allegedly discharged unjustly and contrary to the CBA, to sue the employer. *Id.* at 183, 87 S.Ct. at 913. It states further:

> If a grievance and arbitration procedure is included in the contract, but the parties do not intend it to be an exclusive remedy, then a suit for breach of contract will normally be heard even though such procedures have not been exhausted. *See Republic Steel Corp. v. Maddox*, 379 U.S. 650, 657-658 [85 S.Ct. 614, 618-19, 13 L.Ed.2d 580]; 6A Corbin, Contracts § 1436 (1962).

---

[4] *Vaca* is mentioned only once in *Fortune*, and then reference is made to Justice Black's dissent. 684 F.2d at 376. *Smith* is not referred to in *Fortune*.

Vaca, 386 U.S. at 184 n. 9, 87 S.Ct. at 913 n. 9.

Vaca, on the other hand, sets out that:

> . . . if the wrongfully discharged employee himself resorts to the courts before the grievance procedures have been fully exhausted, the employer may well defend on the ground that the exclusive remedies provided by such a contract have not been exhausted. Since the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced.
>
> . . . .
>
> However, because these contractual remedies have been devised and are often controlled by the union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures.

386 U.S. at 184, 185, 87 S.Ct. at 913, 914.

Fortune has been cited only in one other appellate court decision and has not again been cited by our court again in a published opinion. *Huffman v. Westinghouse Electric Corp* mentions *Fortune* as holding "where grievance denial became final because the Union did not notify employer of intent to strike, employee barred." 752 F.2d at 1225. It notes that *Fortune* is in accord with *Haynes v. U.S. Pipe & Foundry Co.*, 362 F.2d 414 (5th Cir. 1966).

We believe that the CBAs in question do bring about an inference that a strike, or other job action, is the perceived remedy for failure of successful resolution of a grievance absent agreed arbitration. Such resolution, by

work "stoppage or other interference" is not a happy solution from a societal standpoint of an industrial dispute, particularly as it relates to the claim of a single employee that he has been wrongfully discharged. Were we deciding the issue with a clean slate, we might be disposed to adopt the rationale of *Dickeson*, 827 F.2d 627.

We have the precedent of *Fortune*, however, and it has been reiterated as the controlling law by our court in a number of subsequent unpublished cases. We set out the most recent expression of our court concerning *Fortune*:

> This circuit has concluded, in essence that regardless of whether the contractual dispute resolution mechanism results in a "final and binding" decision, the existence of that mechanism will foreclose judicial review provided we find that it was intended to be exclusive. . . .
>
> While we may question the wisdom of foreclosing judicial review of contracts which fail to provide for either "final" or "binding" peaceful resolution via arbitration, since the absence of such a provision cannot be taken to infer that the union (and thereby its employees) gained anything in its contract negotiations as a result, it is nevertheless well established in this circuit that a panel of this court is bound by the prior decisions of another panel of the same issues.

Mochko v. Acme-Cleveland Corp., 826 F.2d 1064 (6th Cir.1987) (unpublished per curiam); *see also Agate v. General Motors Corp.*, 798 F.2d 1413 (6th Cir.1986) (unpublished per curiam), *cert. denied*, 479 U.S. 988, 107 S.Ct. 580, 93 L.Ed.2d 583 (1986); *United Furniture Workers v. National Bedding*, 718 F.2d 1101 (6th Cir. 1983) (unpublished per curiam).

The CBAs in these cases did provide for specific grievance procedures, finally including arbitration, if mutually

acceptable. Absent arbitration, self-help appears to be the means to resolve an unsettled dispute. In this type of situation our circuit has held that an individual is barred from proceeding under § 301 absent an allegation of lack of fair representation by the union. The only means to reexamine this policy would be by *en banc* consideration of the *Fortune* holding and rationale.

We are compelled by the authority herein set out to AFFIRM the decision of the district court as to both Groves and Evans.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 88-1452/1579

ARTHUR GROVES and LOCAL 771, UAW, (88-1452);
BOBBY J. EVANS and LOCAL 771, UAW, (88-1579),
Plaintiffs-Appellants,

v.

RING SCREW WORKS, a Michigan Corporation,
Ferndale Fastener Division,
Defendant-Appellee.

Before: WELLFORD, NELSON and NORRIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgments of the said district court in this case be and the same are hereby affirmed.

IT IS FURTHER ORDERED that Defendants-Appellees recover from Plaintiffs-Appellants the costs on appeal, as itemized below, and that execution therefore issue out of said district court, if necessary.

ENTERED BY ORDER OF THE COURT
LEONARD GREEN
Clerk

/s/ Leonard Green
Clerk

Issued as Mandate: October 31, 1989

Costs: Appellee to Recover

Filing fee	$	
Printing	$	119.00
Total	$	

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 88-1452/1579

ARTHUR GROVES, *et al.*,
Plaintiffs-Appellants,

v.

RING SCREW WORKS, ETC.,
Defendant-Appellee

ORDER

[Filed Oct. 23, 1989]

Before: WELLFORD, NELSON and NORRIS, Circuit Judges

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDEBR OF THE COURT

/s/ Leonard Green
LEONARD GREEN
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 87 CV 2989 DT
Hon. Anna Diggs Taylor

BOBBY J. EVANS and LOCAL 771, U.A.W.,
Plaintiffs,

vs.

RING SCREW WORKS, a Michigan corporation,
Defendant.

WILLIAM MAZEY P17245 Attorney for Plaintiffs
TERENCE V. PAGE P18586 Attorney for Defendant
401 South Woodward Avenue Suite 400
Birmingham, Michigan 48011
(313) 645-0800

ORDER GRANTING SUMMARY JUDGMENT

At a session of said Court held in the U.S. Courthouse in the City of Detroit, State of Michigan on May 25, 1988

Present: Honorable ANNA DIGGS TAYLOR
U.S. District Court Judge

This matter having come before the Court on Defendant's Motion for Summary Judgment on May 23, 1988, the Court having considered the briefs of the parties, the arguments of counsel and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED for the reasons stated from the bench and on the record that Defendant's motion is hereby GRANTED.

/s/ Anna Diggs Taylor
U.S. District Court Judge

Approved as to form:

/s/ William Mazey
WILLIAM MAZEY P17245
Attorney for Plaintiffs

/s/ Terence V. Page
TERENCE V. PAGE P18586
Attorney for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 87 CV 72989 DT

BOBBY J. EVANS and LOCAL 771, U.A.W.,
Plaintiffs,

v.

RING SCREW WORKS, a Michigan corporation,
Defendant.

BENCH OPINION OF THE COURT
RE DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

EXCERPT OF PROCEEDINGS HAD in the above-entitled matter before the Honorable *ANNA DIGGS TAYLOR*, United States District Judge of the Eastern District of Michigan, Southern Division, at 737 U.S. Courthouse and Federal Building, 231 Lafayette Boulevard West, Detroit, Michigan, on Monday, May 23, 1988.

APPEARANCES:

WILLIAM MAZEY, ESQ.,
On behalf of Plaintiffs.

TERENCE V. PAGE, ESQ.,
On behalf of Defendant.

[2] Detroit, Michigan
Monday, May 23, 1988

* * * *

THE COURT: The Court is required by the settled law and by national labor policy to give full effect to fairly negotiated, undisputedly effective collective bargaining agreements. In this case, the parties have negotiated a contract which provides that the grievance procedure on facts such as these, where one of the members of the unit claims an unjust discharge—the grievance procedure ends with the strike vote of the union if the employer refuses to arbitrate.

Now the employer has refused to arbitrate, and the members of the bargaining unit also voted to refuse to strike. The parties have placed their value on the disposition of a question of unjust discharge clearly by the negotiation of a contract which could have included compulsory and final and binding arbitration but does not, and again by refusing to vote to strike when one of the number of the unit needs the support of all in order to have his individual grievance arbitrated.

The Court must honor the bargaining of the parties and the weight that the parties—the relative weight that they've placed on this, this item on the bargaining agenda, [3] and therefore the Court must grant summary judgment to the defendant in this case.

The grievance procedure has terminated, as it was negotiated to do, with the strike vote which was a failure to decide to strike by two-thirds of the members of the bargaining agreement.

The Court must presume—as defendant has said, the Court must presume that the members of this unit got something else instead of final and binding arbitration when they negotiated this contract.

There must be some other term of that contract that was more valuable to them than the final and binding arbitration, and the Court is not going to skew the results of the bargaining by determining that the Court will adjudicate unjust discharge regardless of the way

the parties have voted and negotiated to handle such claims.

So I must grant the judgment as requested by the defendant.

MR. PAGE: Your Honor, if I might, there was a second count in the complaint that dealt with the—

THE COURT: The defamation?

MR. PAGE: —defamation issue.

THE COURT: Do you want to say anything more on the defamation claim?

MR. PAGE: No, because we have agreed that we did [4] not suffer damage; they did defame us.

THE COURT: All right. The union has failed to state a cause of defamation in this matter, and that claim is also dismissed.

So I'll look forward to hearing more about this issue, I'm sure.

MR. PAGE: Thank you, Your Honor.

MR. MAZEY: Thank you.

THE COURT: Thank you.

(Motion concluded.)

CERTIFICATE OF COURT REPORTER

I, LEIF ERIK ANDERSON, Official Court Reporter for the United States District Court for the Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that foregoing proceedings were had in the within entitled and numbered cause on the date hereinbefore set forth, and do further ceritfy that the forgoing transcript has been prepared by me or under my direction.

/s/ Leif Erik Anderson
LEIF ERIK ANDERSON, RPR-CM, CSR-2569
Official Court Reporter,
U.S. District Court, Eastern District
of Michigan, Southern Division.

Dated: Detroit, Michigan,
June 20, 1988.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 87-CV-2988-DT

Hon. Julian A. Cook, Jr.

ARTHUR GROVES and LOCAL 771, U.A.W.,
Plaintiffs,

v.

RING SCREW WORKS, a Michigan corporation,
FERNDALE FASTENER DIVISION,
Defendant.

WILLIAM MAZEY P17245
Attorney for Plaintiffs

TERENCE V. PAGE P18586
Attorney for Defendant
401 South Woodward Avenue Suite 400
Birmingham, Michigan 48011
(313) 645-0800

ORDER GRANTING SUMMARY JUDGMENT

At a session of said Court held in the U.S. Courthouse in the City of Detroit, State of Michigan on April 8, 1988.

Present: Honorable JULIAN A. COOK, JR.
U.S. District Court Judge

This matter having come before the Court on Defendant's Motion for Summary Judgment on April 5, 1988, the Court having considered the briefs of the

parties ,the arguments of counsel and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED for the reasons stated from the bench and on the record that Defendant's motion is hereby GRANTED.

/s/ Julian A. Cook, Jr.
U.S. District Court Judge

Approved as to form:

/s/ William Mazey
WILLIAM MAZEY P17245
Attorney for Plaintiffs

/s/ Terence V. Page
TERENCE V. PAGE P18586
Attorney for Defendant

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUHERN DIVISION

Civil Action #87 CV 2988 DT

ARTHUR GROVES and LOCAL 771, U.A.W.,
Pliantiffs,

-vs-

RING SCREW WORKS, a Michigan corporation,
FERNDALE FASTENER DIVISION,
Defendant.

JUDGE'S RULING ON MOTION FOR SUMMARY JUDGMENT

Proceedings held in the above-entitled matter, before the HONORABLE JULIAN ABELE COOK, JR., U.S. District Judge, at 237 U. S. Courthouse and Federal Building, Detroit, Michigan, on Tuesday, April 5, 1988.

APPEARANCES:

WILLIAM MAZEY, ESQ.
Appearing on behalf of Plaintiffs.

TERENCE V. PAGE, ESQ.
Appearing on behalf of Defendant.

[2] Detroit, Michigan
Tuesday, April 5, 1988
Afternoon Session

* * * *

THE COURT: On July 20, 1987 the Plaintiffs Arthur Groves and Local 771 of the UAW filed a complaint in the Oakland Circuit Court against the Defendant Ring Screw Works, a Michigan corporation. The Plaintiffs note in part that the individual Plaintiff Arthur Groves, quote, "was discharged by Defendant on April 22, 1987 without just cause and thereby breached the collective bargaining agreement and the employment contract of Plaintiff Arthur Groves." The Plaintiffs thereafter charge Defendant with having breached their contractual responsibilities to the Plaintiff local and having defamed the individual Plaintiff, who allegedly suffered damage as a result of the improper activities and actions by the Defendant. The matter was subsequently removed to this court by the Defendant, who now submits a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Plaintiffs have filed pleadings in opposition, thereby creating an issue which must be resolved by this Court.

The Plaintiff Groves was terminated by the Defendant on April 22, 1987 after an extended period of [3] absences, according to the Defendant. Despite the contentions of the Defendant, Groves asserts that the—his absences were legitimate and were based for legitimate medical causes. Because the differences between the two entities could not be resolved, Groves utilized the provisions of the collective bargaining agreement and submitted his complaint to the grievance procedure that had been outlined and authorized by the collective bargaining agreement. Throughout the steps the matter was unresolved in that the Defendant steadfastly refused to reinstate Groves to his former position. At the conclusion of Step 4, the request for an arbitration of the issue in controversy was declined by the Defendant. Thereafter, rep-

resentatives of Local 771 met to determine if a strike vote should or should not be authorized. On May 31, 1987, the membership of the Plaintiff local voted not to strike on the basis of Groves' alleged improper discharge. As a result of the decision by the membership, Groves instituted the instant action to which reference has been made.

The instant motion which has been brought by the Defendant asserts that a judgment should be entered in its favor because, one, quote, "Groves may not obtain a judicial remedy for his alleged wrongful discharge because he has not claimed his union breached its duty of [4] fair representation and cannot upset the finality of his contractual grievance procedure," end of quote, and. two, quote, "Plaintiff union cannot recover for defamation because it cannot state a prima facie case therefor. Summary judgment is also warranted because the union has admitted no damage to its reputation occurred as a result of the incidents involving Plaintiff Groves."

In response, there does not appear to be any reaction from the Plaintiffs with regard to the Defendant's assertion, namely; the defamation issue. Thus, it would appear that there has been an implicit concession by the Plaintiffs to the defamation issue. The Court believes that, in the absence of a response and, more importantly, because it believes that the Plaintiffs have not set forth facts which would establish the requisite elements of defamation under the *Rouch* versus *Enquirer and News of Battle Creek* case. Thus, the Court will grant summary judgment in favor of the Defendants as relates to the defamation issue.

We turn now to the first issue which had been raised by the Defendant in its motion for summary judgment and an issue about which the parties have argued most strenuously today, namely; the alleged violation of the just cause provision of the collective bargaining agreement.

[5] The Defendant in its Rule 56 motion argues, in essence, that the Plaintiff Groves cannot come to this Court under Section 301 of the Labor-Management Relations Act inasmuch as the union has set up a mechanism for a final dispute dispute resolution. It should be noted that the Plaintiff has argued that this provision within the collective bargaining agreement does not provide a final—a provision for a final dispute and notes that it would be inequitable, if not illegal, for the parties and, indeed, the Court to preclude an injured party from proceeding to air his differences with the Court—

(Off the record.)

THE COURT: The Defendant relies upon *United Steelworkers of America* versus *American Manufacturing*, 363 U.S. 564, decided in 1960. There is an exception to the *Steelworkers* rule in which an aggrieved party, a Plaintiff also sues his union for breaching its duty of fair representation. However, the exception to the *Steelworkers* rule is not applicable here in that there is no evidence that the individual Plaintiff Arthur Groves has sued his own union and, more specifically, there is no contention by Groves that the union violated its duty of fair representation. Thus, the Court determines that the exception to which reference has been made is not applicable here.

[6] There is a case which was decided by the Michigan Supreme Court in 1986, *Breish*, *B-r-e-i-s-h*, versus *Ring Screw Works*, 397 Mich. 586, which adopted a holding that would appear to support the contentions of the Plaintiff. In that case the Court determined that an individual who has been bound by a collective bargaining agreement could, nevertheless, sue his employer without suing the union when the collective bargaining agreement did not make any provision for arbitration. The facts in *Breish* appear to be clearly on point factually and substantively here. Ordinarily, the *Breish* case would be dispositive of the controversy. However, the 6th Circuit in 1982, sev-

eral years prior to the rendition of *Breish*, rendered a decision which runs counter to the Michigan rule. Thus, it is the 6th Circuit standard and ruling which must apply here as opposed to the Michigan ruling. Thus, the Court must determine that in the absence of a—strike that—must hold that the absence of a mandatory arbitration provision does not alter the finality of the grievance proceedings. The Court also cites the *United States* v. *Hendricks*, 752 F 2d 1226, a 7th Circuit case, which was decided in 1985.

This Court believes that, contrary to the assertions of the Plaintiffs, that the *Vaca* versus *Sipes* and the *Smith* versus *Evening News* cases, to which [7] reference was made during the oral argument, are not applicable here and do not give an instruction to the Court as to its findings.

Thus, this Court concludes that, notwithstanding the alleged wrongful act by the Defendant, that the union and management, at a time prior to the alleged incident, entered into a contractual relationship which formed the basis for the collective bargaining agreement. This Court determines that the collective bargaining agreement did provide for a finality of the grievance procedure and that the alternative action—namely, the right of strike by the workers—was specifically addressed and declined by them. To do otherwise would, in the judgment of this Court, not only circumvent the presumed intent of the parties, but would have the effect of nullifying, in part, the bargaining process that was engaged in by the parties prior to the discharge of Arthur Groves by his employer. Therefore, the Court will and does determine that the Defendant's motion for summary judgment must be granted, and the Court will enter an appropriate order.

Thank you.

(Proceedings adjourned at 3:38 p.m.)

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, DENISE A. MOSBY, Official Court Reporter, in and for the United States District Court in the Eastern District of Michigan, Southern Division, do hereby certify that I reported stenographically the foregoing proceedings at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form under my supervision by means of computer-assisted transcription; and I do further certify that this is a true and correct transcription of my stenographic notes so taken.

/s/ Denise A. Mosby
DENISE A. MOSBY, RPR-CSR
Official Court Reporter

DATED: June 26, 1988

No. 89-1166

In The

Supreme Court of the United States

October Term, 1989

ARTHUR GROVES, BOBBY J. EVANS
and LOCAL 771, INTERNATIONAL UNION UAW,

Petitioners,

v.

RING SCREW WORKS,
FERNDALE FASTENER DIVISION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

– AND APPENDIX –

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In The

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October Term, 1989

ARTHUR GROVES, BOBBY J. EVANS
and LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS,
FERNDALE FASTENER DIVISION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

COUNTER-STATEMENT OF THE CASE

Petitioners Arthur Groves and Bobbie J. Evans were hourly employees at divisions of Respondent Ring Screw Works ("the Company"). Both were represented for purposes of collective bargaining by UAW Local 771. Each Petitioner claimed he had been dismissed in violation of his collective bargaining agreement. Each attempted to gain reinstatement to his job by following the grievance procedure set forth in the collective bargaining agreement.

Article IV, Section 1 of the collective bargaining agreements provides that should a difference arise between the Company and the Union, or its members employed by the Company, as to the meaning and appli-

cation of the provisions of the agreement, an earnest effort would be made to settle the difference through a multi-step grievance procedure. Step five provides that "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only)." Res. App. A-4.

Article IV, Section 6 provides that "[a]n agreement reached between the Company and the Shop Committee under the grievance procedure shall be binding on all employees affected and cannot be changed by any individual." Res. App. A-6 – A-7.

Section 4 provides that unresolved grievances (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7. Res. App. A-6. Article XVI, Section 7 provides, in effect, that where all negotiations have failed through the grievance procedure, the Union is released from its no-strike pledge and the Company is released from its no-lockout pledge. Res. App. A-23 – A-24.

The parties do not dispute that the grievance procedures set forth in the collective bargaining agreements were properly followed to their conclusion, nor do they dispute that Petitioners received competent representation from their Union. Arbitration was declined by the Company in each Petitioner's case. As such, pursuant to the provisions of the collective bargaining agreements, this left the Union with the final option to strike, which it declined to exercise in both cases. Pet. App. 4a.

Petitioners then filed separate lawsuits, each of which joined their Union as a Co-Plaintiff. Since the Petitioners were merely dissatisfied with the results of the grievance process and could show no legally cognizable reason for judicial review of their claims, the Company

moved for summary judgment as to both Petitioners' claims. The United States District Court for the Eastern District of Michigan, Southern Division, granted the Company's Motion for Summary Disposition, holding that Petitioners were bound by the terms and remedies of their respective collective bargaining agreements. Pet. App. 19a, 28a.

Both Petitioners appealed. The United States Court of Appeals for the Sixth Circuit affirmed the trial court's decision. Pet. App. 1a-12a. Petitioners' request for an en banc hearing before the Sixth Circuit was denied. Pet. App. 15a. Petitioners now seek this Court's review of the judgment of the Sixth Circuit.

REASONS FOR DENYING THE WRIT

Petitioners request this Court to grant certiorari on the basis that the Sixth Circuit's decision in this case is contrary to the national labor policy. Respondents assert the Petition for Writ for Certiorari should be denied because the Sixth Circuit opinion is consistent with the national labor policy, as construed by this Court, that courts will give full play to the means chosen by the participants to a collective bargaining agreement for settlement of their disputes. This Court has consistently held that an employee is bound by the grievance remedies agreed upon in arms-length negotiations between the employer and the union.

Petitioners further claim this Court's review is necessary to resolve a conflict between the circuits. Not every perceived conflict between the circuits, however, merits review by this Court. In view of the ever-increasing number of petitions it receives, this Court has tended to accept cases for review by certiorari only when the case presents a conflict among circuits on an

important federal question. The question presented in this Petition for Writ of Certiorari is not such a question. Petitioners have failed to present any evidence that the particular form of grievance procedure contained in the collective bargaining agreements in this case is contained in a significant number of collective bargaining agreements.

Since the provisions of a collective bargaining agreement are arrived at through the give and take of arms-length negotiations, a national labor policy has developed which defers to the participants' own bargained-for resolution whenever possible. Since the opinion below is consistent with that policy, this Court should decline to review the matter and deny Petitioners' Petition for Writ of Certiorari.

I.

THE DECISION BELOW IS CONSISTENT WITH THE NATIONAL LABOR POLICY.

Congress explicitly stated in Section 203(d) of the Labor Management Relations Act, 29 U.S.C. § 173(d), that in settling grievance disputes, the Act contemplated that the method agreed upon by parties to the collective bargaining agreement should be the means of settling the disputes. In the *Steelworkers' Trilogy*,[1] this Court has conclusively held that under § 301

[1] *See United Steelworkers of America* v. *American Manufacturing Company*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

of the Labor-Management Relations Act, 29 U.S.C. § 185, an employee is bound by the results of the procedure which his representative union has chosen in agreement with the employer for the resolution of their disputes. This holding is now commonly referred to as the "finality rule."

In discussing national labor policy, the Fifth Circuit in *Haynes* v. *United States Pipe & Foundry Co.*, 362 F.2d 414 (5th Cir. 1966) stated:

> Of the three available forums for the resolution of disputes — contractual grievance procedure such as arbitration, or the court, or the picket line — the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement . . . . The court has opened the doors of the courthouse only when the parties have chosen this forum over the others.

Haynes at 416-17; *See also Smith* v. *Evening News*, 371 U.S. 195 (1962); *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962).

Petitioners cite out-of-context quotes from *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448 (1957), to support their position that the national labor policy permits employees who are unhappy with the final results of their grievance procedure to seek review in the federal courts. In fact, *Lincoln Mills, supra*, which was decided before the *Steelworkers' Trilogy*, stands for the opposite proposition. The national labor policy inherent in *Lincoln Mills* and its progeny is that an employee is

bound by the grievance remedies his union has negotiated. *See Haynes* v. *United States Pipe & Foundry Co.*, 362 F.2d 414, 417 (5th Cir. 1966).

The quote cited by Petitioners from page 453 of the *Lincoln Mills* opinion must be viewed in context, considering the issue which was before the court at that time. In *Lincoln Mills*, the employer and the employees' union had negotiated a collective bargaining agreement which provided that the last step in the grievance procedure was arbitration. Arbitration could be requested by either party. The grievances at issue were processed through the grievance procedure and were denied by the employer. The union requested arbitration and the employer refused. The union then brought suit to compel arbitration. 353 U.S. at 449.

The issue before the Supreme Court was whether Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, was merely jurisdictional or whether it authorized the federal court to fashion a body of federal law for the enforcement of collective bargaining agreements. The Court held that the Norris-LaGuardia Act, 29 U.S.C. § 101, did not withdraw from the federal district courts their jurisdiction under Section 301 to compel arbitration of grievance disputes as provided in the collective bargaining agreement.' 353 U.S. at 458.

Thus, when the Court quoted the 1947 Senate Report which says, "We feel that the aggrieved parties should also have a right of action in the federal court . . . ," it was doing so in the context of discussing whether the federal court had jurisdiction to compel the parties to a collective bargaining agreement to abide by the terms of the agreement. 353 U.S. at 453. Petitioners' use of this quote to 'stand for the proposition that an employee unhappy with the results of the grievance

procedure may disregard the exclusivity of that procedure and bring suit against his employer in federal court misstates the law.

Petitioners also suggest that the national labor policy expresses a preference of judicial remedy over the use of economic weapons. A long line of cases from this Court and the appeals courts of various circuits makes clear that the national labor policy requires the courts to give full play to the means chosen by the parties to a collective bargaining agreement for settlement of their disputes. An employee is bound by the grievance remedies his union negotiates.

As previously stated, the collective bargaining agreement in this case was arrived at through arms-length negotiation with the UAW, a powerful and sophisticated union which was certainly at no disadvantage during the collective bargaining process. Petitioners' Union bargained for and agreed to the strike/lock-out option as the final step in dispute resolution if the grievance procedure failed to resolve the matter. The national labor policy mandates that Petitioners are bound by that agreement. Since the Sixth Circuit's opinion in this case follows that mandate, this Court should decline to review the matter and deny the Petition for Writ of Certiorari.

The court in *Haynes, supra,* concluded its opinion with an observation very appropriate to this case:

> This is a run-of-the-[mill] case where the grievance procedure was followed and the adverse decision against appellant became final. Being dissatisfied, he sought to start anew in the face of the bar of the final decision under the grievance procedure. This he may not do under the current status of federal labor law as we understand it.

362 F.2d at 418.

II.

THE QUESTION PRESENTED BY PETITIONERS IS BEST LEFT TO A CASE-BY-CASE REVIEW BY THE CIRCUITS.

Supreme Court Rule 17 sets forth the considerations governing review on certiorari. The Rule states that a review on Writ of Certiorari "is not a matter of right, but of judicial discretion, and will be granted *only* when there are *special* and *important* reasons therefor." Supreme Court Rule 17.1 (emphasis added). This Court has stated that "'special and important reasons' imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance become evasion." *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74, (1955).

Rule 17 then sets forth three examples of the type of reasons which might cause the Court to exercise its discretion and grant review. One reason which might merit the Court's review is that a federal court of appeals has rendered a decision which is in conflict with either the decision of another federal court or a state court of last resort. Petitioners claim the decision rendered by the Sixth Circuit in this case presents such a conflict.

Not every perceived conflict among circuits, however, merits a grant of certiorari. The rationale for granting certiorari to resolve conflicts among circuits is to achieve uniform application of federal law in the circuits. Therefore, the Court has not been inclined to grant certiorari to resolve a conflict over an issue which

is unlikely to recur or which results from a unique factual situation.[2]

Due to of the ever-increasing number of petitions it receives, this Court has tended to accept cases for review by certiorari only when the case presents a conflict among circuits on an important federal question. *See Charles D. Bonanno Linen Service, Inc.* v. *National Labor Relations Board*, 454 U.S. 404, (1982) (Court considers whether a bargaining impasse justifies an employer's unilateral withdrawal from a multi-employer bargaining unit); *National Labor Relations Board* v. *Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978) (Court considers whether the Freedom of Information Act requires the National Labor Relations Board to disclose, prior to its hearing on an unfair labor practice complaint, statements of witnesses whom the board intends to call at the hearing). *See also* Justice Stevens' separate opinion in *Watt* v. *Alaska*, 451 U.S. 259, 273-74 (1981).

The paucity of cases upon which Petitioners rely to support their claim that there is a division among the circuits suggests that the division is not as deep as Petitioners would lead this Court to believe. The collective bargaining agreement in this case provides that when all negotiations have failed through the grievance procedure, the Union is released from its no-strike pledge and the Company is released from its no lock-out pledge. Petitioners have failed to present any evidence that this clause appears in a significant number of collective bargaining agreements. In fact, this bargained-for clause arises in a very small percentage of collective bargaining agreements in this country.

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[2] *See* 13 J. Moore, H. Bendix & B. Ringle, Moore's Federal Practice § 817.21 (2d ed. 1988). *See also* Harlan, Manning the Dikes (1958), 13 *Record NYCBA* 541, 555.

Further, the collective bargaining agreement in this case was arrived at through arms-length negotiations with the United Auto Workers, a bargaining representative which was certainly under no inherent disadvantage in the bargaining process. The fundamental precept of collective bargaining is that concessions are made in return for advantages elsewhere in the agreement. Because the provisions of a collective bargaining agreement are arrived at through the give-and-take of arms-length negotiation, a national labor policy has developed which defers to the participants' own bargained-for resolution whenever possible. Petitioners now seek this Court's intervention by claiming this case presents an important federal question over which the circuits are divided. This Court has already conclusively held, however, that under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, an employee is bound by the results of the procedure which his representative union has chosen in agreement with the employer for the resolution of their disputes.[3]

When judicial resolution is mandated, these matters are best reviewed on a case-by-case basis. In this case, the Sixth Circuit affirmed the trial court's order of summary judgment in Petitioners' cases based upon the established precedent that where the collective bargaining agreement contains procedures for settlement of disputes through grievance and arbitration, these contractual remedies are exclusive and binding on individual employees. An employee who is merely unhappy with the final resolution of his grievance through the grievance procedure may not proceed in federal court on a § 301 action against his employer without alleging that his union has breached the duty of fair representa-

[3] *See* the *Steelworkers' Trilogy* cited in Fn 1, *supra*.

tion. *Fortune* v. *National Twist Drill & Tool Division, Inc.*, 684 F.2d 374 (6th Cir. 1982); *Haynes* v. *United States Pipe & Foundry Co.*, 362 F.2d 414 (5th Cir. 1966).

Further, after the Sixth Circuit affirmed the trial court's order granting Defendant's motion for summary judgment in this case, Petitioners moved for an en banc review of the decision. Not one judge voted to hear the case en banc. The petition for rehearing was then referred to the original panel. The panel reviewed the petition for rehearing and concluded the issues raised in the petition were fully considered upon original submission. Pet. App. 15a.

Petitioners also claim that the decision below is inconsistent with that of the Michigan Supreme Court in *Breish* v. *Ring Screw Works*, 397 Mich. 586, 248 N.W.2d 526 (1976). The decision in *Breish*, however, does not present a conflict worthy of this Court's review, since the *Breish* opinion has been rejected by the Sixth Circuit and other federal circuits as being a poorly reasoned and flawed analysis of federal labor law.

In *Breish*, the plaintiff, who claimed wrongful discharge, had a collective bargaining agreement which made no provisions for arbitration. Nevertheless, his union was permitted to take a strike vote in case the grievance process was resolved unfavorably to the employee. The union declined to strike over the plaintiff's grievance. *Id.* at 590-91, 248 N.W.2d at 527-28.

Breish and Petitioners' case present factually similar situations. Most significantly, the plaintiff in *Breish*, like the Petitioners in the present cases, attempted to circumvent the finality rule without suing his union for breach of the duty of fair representation. The Michigan Supreme Court allowed the plaintiff in *Breish* to do so first by finding the grievance procedure in his

collective bargaining agreement to be procedurally unfair, and then holding procedural unfairness of contractual remedies to constitute an exception to the finality rule. *Id.* at 598, 248 N.W.2d at 534.

The Michigan Supreme Court took the initial step toward this holding by narrowing federal precedent upholding the finality of the agreed-upon contractual grievance process to a doctrine which, according to the *Breish* court, intends nothing more than to uphold the finality of arbitration decisions. *Id.* at 593-94, 248 N.W.2d at 529-30.

The court then proceeded to put undue emphasis upon references to arbitration in *Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976). As arbitration was the final step of the grievance procedure in *Hines*, the Supreme Court stated, "Courts are not to usurp those functions which collective bargaining contracts have properly entrusted to the arbitration tribunal." 363 U.S. at 593. From this sentence and other similar language, the *Breish* court reached the overbroad conclusion that:

> [A]n individual employee is barred from maintaining a § 301 suit on the merits of his grievance after exhausting a grievance procedure to the final step of a procedure culminating in either "final and binding" arbitration decision or a "final and binding" joint committee decision. This is, essentially, what the Court has characterized as the "finality rule." See *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 96 S.Ct. 1048, 47 L.Ed. 2d 231.

Id. at 596, 248 N.W.2d at 531.

This erroneous conclusion was broadened when the *Breish* court held that underlying the above finding was federal labor law indicating that courts have the power

to determine whether a contractual settlement is, in fact, "final" by determining whether the contractual grievance procedure has attained a "minimum level of integrity." This conclusion was supported by quoting passages out of context from *Hines, supra, Rothlein* v. *Armour & Co.*, 391 F.2d 574 (3rd Cir. 1968), and *Bieski* v. *Eastern Automobile Forwarding Co.*, 396 F.2d 32 (3rd Cir. 1968). *See* 397 Mich. at 600-01, 248 N.W.2d at 532-33.

When the cases cited by the Court in *Breish* are read, it becomes apparent that they at best only tangentially support the propositions for which they were cited. The quotations from *Hines* and *Rothlein* were in reference to whether the union had breached its duty of fair representation. The quotation in *Bieski* came from a portion of the opinion discussing whether the arbitrator was given jurisdiction by the terms of the collective bargaining agreement to determine the dispute in question. At no time did any of the above three cases discuss the *per se* procedural adequacy of the terms of the applicable collective bargaining agreement.

As the *Breish* court's ultimate conclusion that "procedural inadequacy" of a collective bargaining agreement can constitute an exception to the finality rule is unsupported by case authority, this case has not been considered persuasive by courts subsequently considering it. *Breish* has been considered, and rejected, by the Sixth Circuit in *Fortune* v. *National Twist Drill & Tool Division*, 684 F.2d 374 (6th Cir. 1982). In *Fortune*, the plaintiffs claimed they were entitled to have their discharges reviewed by a federal court despite the fact that they failed to allege their union breached its duty of fair representation. Since the plaintiff's collective bargaining agreement provided for a strike vote but no

arbitration in the event negotiations regarding a grievance failed, the plaintiffs relied heavily upon *Breish*.

The *Fortune* Court rejected plaintiffs' position, holding that "[t]he individual employee's right of fair representation is vindicated primarily under the National Labor Relations Act which gives said employee the right to sue the union as bargaining representative for bad faith representation." 684 F.2d at 376, *citing Hines* v. *Anchor Motor Freight*, 424 U.S. 554 (1976), and *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 337-38 (1954). In coming to this conclusion, the Court noted that it knew of no provision of federal labor law which provided the courts with the power to break a deadlock over a grievance dispute where the parties have failed to provide for arbitration of their disputes. 684 F.2d at 375.

The Court then went on to quote, without further elaboration, passages from two Fifth Circuit cases with holdings contrary to that in *Breish*. The first case cited was *Haynes* v. *United States Pipe & Foundry Co.*, 362 F.2d 414, 416 (5th Cir. 1966), where the court reasoned:

> Congress explicitly stated, by way of a policy, in § 203(d) of the Taft-Hartley Act, 29 U.S.C.A. § 173(d), that in settling grievance disputes, the Act contemplated that the method agreed upon by parties to collective bargaining agreements should be the means of settling such disputes. In suits under § 301(a), the Supreme Court construed this policy as requiring the courts to give full play to the means chosen by parties to a collective bargaining agreement for settlement of their differences.

To clarify this passage, the Court then quoted the Fifth Circuit's opinion in *Harris* v. *Chemical Leaman*

Tank Lines, Inc., 437 F.2d 167, 171 (5th Cir. 1971), where the court held:

> Assuming that grievance procedures have been exhausted by the union, the individual grievant is ordinarily bound by a resulting adverse decision which is "final" and "binding" on the parties to the contract. *Boone* v. *Armstrong Cork Co.*, 5 Cir., 384 F.2d 285 (1967); *Haynes* v. *United States Pipe & Foundry Co.*, 5 Cir., 362 F.2d 414 (1966). "Final adjustment by a method agreed upon by the parties" being the declared goal of federal labor policy, courts will refuse to review the merits of such a decision.

Based upon the above two passages, as well as a lengthy quote from *Ford Motor Co.* v. *Huffman, supra*, not inconsistent with the above, the *Fortune* Court rejected plaintiff's *Breish* arguments and affirmed summary judgment for the defendant. Since *Fortune* was decided, there have been no developments in the case law which might give reason for this Court to reconsider the conclusions and holding reached in *Fortune*.

Breish was most recently analyzed by the Seventh Circuit in *Huffman* v. *Westinghouse Electric Co.*, 752 F.2d 1221 (7th Cir. 1985). Aside from rejecting the *Breish* case in a manner closely paralleling that in *Fortune*, this case is significant for two reasons. First, the Court rejected its earlier dicta in *Ford* v. *General Electric*, 395 F.2d 157, 159 (7th Cir. 1968), where it questioned whether strike provisions in collective bargaining agreements comport with congressional labor policy.

Most importantly, however, the Court in *Huffman* explicitly rejected the holding in *Breish* that interests

in "procedural fairness" can constitute an exception to the finality rule:

> Moreover, unlike the Michigan Supreme Court, we are unconvinced that the employees' claim that the terms of the contract deny them procedural fairness should outweigh the employer's interest in the enforcement of the contract's finality provision. Collective bargaining is a process by which both the union and the employer concede certain points in order to gain advantages elsewhere. If the grievance procedure under this contract favors the employer, the Union (and therefore the employees) presumably gained something in return. We do not, therefore, find convincing the employees' argument that they should be able to escape the terms of the contract the Union bargained for them because another contract might have been more favorable. Nor do we find that argument to be in accordance with the policy of federal labor law that parties to collective agreements should be able to determine between themselves the manner in which they wish to resolve contractual disputes. We therefore agree with the district court that the employees' claims are barred.

752 F.2d at 1226.

Finally, the Sixth Circuit has recently held that, although arbitration is greatly favored by federal courts, it is not arbitration *per se* that federal policy favors, but rather final adjustment of differences by a means selected by the parties. *McCreedy* v. *Local Union No. 971, UAW*, 809 F.2d 1232, 1237 (6th Cir. 1987). Although this holding came down in a Section 301 action to compel arbitration and not in the context of a dispute concerning the finality rule, *McCreedy* re-

affirms the Sixth Circuit's commitment to upholding the contractual grievance procedures which the parties to a dispute had previously agreed upon. Since the decision below is in accord with that policy, this Court should decline to review this matter and deny the Petition for Writ of Certiorari.

CONCLUSION

The national labor policy, as construed by this Court, is that courts will defer to the means chosen by the participants to a collective bargaining agreement for resolution of their disputes. The opinion below is consistent with that policy. Since Petitioners have failed to present any evidence that the decision below evidences a conflict between circuits which merits this Court's review, this Court should decline to review the matter and deny the Petition for Writ of Certiorari.

Respectfully submitted,

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DATED: February 19, 1990

RESPONDENT'S APPENDIX

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1985 AGREEMENT
BETWEEN RING SCREW DIVISION OF RING SCREW WORKS AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL NO. 771

* * *

THIS AGREEMENT, made and entered into this 5th day of January, 1985, between the RING SCREW DIVISION of RING SCREW WORKS, hereinafter referred to as the Company, and the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW) Local No. 771, hereinafter referred to as the Union, agree as follows:

ARTICLE I
RECOGNITION

Section 1. The Company recognizes the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local No. 771, as the exclusive representative of its employees for the purpose of collective bargaining in respect to matters on rates of pay, wages, hours of employment, and other conditions of employment.

Section 2. The term "employees" as used in this agreement shall not include any persons working as foremen, industrial nurses, guards, salaried office and clerical employees, engineering and drafting em-

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[*Printer's Note*]: *Agreement's Table of Contents omitted in this reproduction.*

ployees, firemen, stock chasers, maintenance engineers, technical employees, and supervisors as defined in the National Labor Relations Act, as amended.

Section 3. The management of the plant and the direction of the working forces, including (but not limited to) the right to hire, suspend, or discharge for just cause, the right to adopt shop rules, the right to relieve employees from duty because of lack of work or other legitimate reasons, and to introduce new and improved methods, are vested exclusively in the Company; provided, however, that this will not be used for the purpose of discriminating against any employee because of membership in the Union, subject to provisions of this agreement.

ARTICLE II
UNION SECURITY

Section 1. It shall be a continuing condition of employment with the Company, for the duration of this agreement, that employees covered by this agreement, both present and new employees, shall be members in good standing with the Union. New employees shall become members sixty (60) days after their hiring date.

Section 2. For the purpose of this article, an employee shall be considered a member of the Union in good standing if he tenders the periodic dues and initiation fees required as a condition of membership.

Section 3. The Company shall, from each employee starting sixty (60) days after their hiring date, who, in writing, on form agreed to by the Company and the Union, authorized the Company to do so, deduct union dues in such amount as shall be certified to on such form from wages payable on the first regular

pay-day of each month. All sums deducted shall be remitted to the Union not later than the 30th day of the calendar month in which the deductions are made and shall be accompanied by a record of employees from whom deductions have been made, with the amount of such deductions.

ARTICLE III
UNION REPRESENTATION

Section 1. For the purpose of collective bargaining and for the disposition of grievances, there shall be a Shop Committee consisting of six (6) members maximum who will be elected by employees on the seniority list of the Company and one representative of the Local Union who may act as an ex officio member of the Shop Committee. Members of the Shop Committee shall also act as stewards.

Section 2. Meetings between the Shop Committee and the Company Representatives shall take place during working hours, the Company to pay Committeemen only for time on regular scheduled shift. Should the Company or the Union request a special meeting in writing, such meeting shall be held within three (3) days from such request or as soon thereafter as possible.

Section 3. A copy of the minutes of meetings between Management and the Shop Committee shall be posted on the bulletin board. Minutes to be prepared by the Shop Committee Secretary and shall be approved for posting by the Company Representative.

Section 4. No employee with less than twelve (12) months seniority shall be eligible for any elective office in the Union within the plant.

Section 5. The names of the Shop Committee and the Plant Chairman shall be certified in writing to the Company by the Union.

ARTICLE IV
GRIEVANCE PROCEDURE

Section 1. Should a difference arise between the Company and the Union, or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:

Step 1. Between the employee, his steward, and the foreman of his department. If a satisfactory settlement is not reached, then

Step 2. Between the employee, his steward(s) and the Manufacturing Manager or his alternate. If a satisfactory settlement is not reached, the grievance shall be reduced to written form and then

Step 3. Between the Shop Committee, with or without the employee, and the Company Management. If a satisfactory settlement is not reached, then

Step 4. Between the Shop Committee, Local Union &/or International Representative, and the Plant Management. If a satisfactory settlement is not reached, then

Step 5. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only.)

Requests for arbitration must be made within thirty (30) days after the decision of the Company has been given to the Union at the fifth step of the Grievance Procedure. A request will be made in writing to the American Arbitration Association which will submit a list of qualified arbitrators for the parties' selection. The arbitrator shall then be selected according to the rules of the American Arbitration Association.

It is understood and agreed that the arbitrator shall have no authority except to determine disputes involving discharges. The arbitrator shall construe this Agreement in a matter which does not interfere with the exercise of the employer's rights and responsibilities except where they have been expressly and clearly limited by the terms of this Agreement. The arbitrator shall have no power or authority to add to, subtract from, or modify any of the terms of this Agreement and shall not substitute his judgment for that of the employer's where the employer is given discretion by the terms of this Agreement. The arbitrator shall not render any decision which would require or permit an action in violation of either State or Federal law. The arbitrator shall have no power to rule upon any case which might otherwise be the subject of a charge of an unfair labor practice or a State or Federal civil rights claim.

The arbitrator's decision shall set forth his findings and conclusions with respect to the issues submitted to arbitration. The arbitrator's decision shall be final and binding upon the employer, the Union, and the employee or employees involved.

Either party shall have the right to secure, serve, and enforce subpoenas for such witnesses as are necessary to the full presentation of its case. The arbitrator's fees and expenses shall be borne equally between the par-

ties. The expenses and compensation for attendance of any employee, witness or participant in the arbitration hearing, shall be paid by the party calling such employee, witness, or requesting such participation.

Section 2.

(a) Grievances alleging an unjust or discriminatory discharge must be submitted in writing to the foreman involved within two (2) working days of the discharge. The Company must render a final decision through the grievance procedure within four (4) working days of the receipt of such grievance.

(b) Any employee who, as a result of such grievance is reinstated, shall be paid by the Company for the time which he would otherwise have worked for the Company and shall be returned to his regular job at his previous rate.

Section 3. The Company shall not consider the grievances of any individual employee unless it is presented in writing under the grievance procedure within five (5) working days of their occurrence, excepting discharges which are governed by the preceding section. The Company must render a final decision through the grievance procedure within three (3) working days of the receipt of such grievance.

Section 4. Unresolved grievance (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7.

Section 5. Members of the Shop Committee and Plant Chairman shall be allowed the necessary time to investigate and adjust grievances promptly.

Section 6. An agreement reached between the Company and the Shop Committee under the grievance procedure shall be binding on all employees affected and cannot be changed by any individual.

ARTICLE V
SENIORITY

Section 1. All persons shall be considered on a probationary basis for a period of six (6) months from the date of hiring and may be laid off or discharged before the expiration of said period without recourse.

Section 2. The Company will prepare and post the seniority list on the bulletin board. It will be brought up to date each six-month period.

Section 3. An Employee shall lose seniority for the following reasons:

(a) An Employee quits.

(b) The Employee is discharged for just cause.

(c) The Employee is absent for three (3) work days from work without notifying the Company unless the employee presents a reason acceptable to the Management and the Shop Committee for not having done so.

(d) The Employee fails to report for work within three (3) working days (five (5) working days when an employee verifies full time employment (minimum of 32 hours per week) at the time of recall) when recalled by the Company after a layoff unless he presents a reason acceptable to the Company and the Shop Committee.

(e) If the Employee is laid off for a continuous period equal to the seniority he had acquired at the time of such layoff period.

(f) If the Employee on extended layoff fails to notify the Company annually of his intention of returning to employment with the Company if recalled. Such notice to be made by certified or registered mail annually within ten (10) working days prior to the anniversary date of layoff. Notice may also be given in person during regular business hours and in such case the employee shall receive a receipt for delivery of notice.

Section 4. An Employee who believes that his seniority rights are being violated shall notify the Shop Committee which, in turn, shall notify the Manufacturing Manager in writing. The Manufacturing Manager will provide the Committee with a receipt showing that he received the notification. If his seniority rights are being violated, and if after notification, the Company fails to rectify its error, the aggrieved employee shall be compensated for the loss of his time at his regular rate from the time of such notification until the time he is restored to work.

Section 5. Shop Committee members shall head the seniority list for purposes of layoff and recall during their term of office and shall be returned to their original standing on the seniority list on the termination of this service.

ARTICLE VI
LAYOFF

Section 1. When it becomes necessary to reduce the work force, the Company shall apply the following program:

(a) All employees shall be given forty-eight (48) hours notice before layoff becomes effective, unless layoff is for less than one week.

(b) All probationary employees shall be laid off first within department.

(c) In the event of any further layoffs, the man who has the least seniority in his department shall be laid off first. Any deviation subject to agreement by the Company and the Shop Committee.

(d) There are two (2) departments — the Tool Department and the Production Department.

(e) The Company agrees not to operate more than five (5) people per shift, excluding heat treat, in excess of forty (40) hours per week during the time employees with more than one year seniority are laid off. The foregoing overtime shall not include more than two (2) Saturdays in a row. Any temporary deviation from the above to be approved by the Shop Committee.

Section 2. When an employee is sent home for lack of work or other causes except sickness, injury or infraction of shop rules, no junior employee shall be permitted to work on a job where such employee was working except in cases of a reasonable emergency approved by the Shop Committee on that shift.

Section 3. Employees with greater seniority shall replace employees who have less seniority whenever any time is to be lost due to lack of work, breakdown, or other causes, exceptions to be approved by the Shop Committee.

ARTICLE VII
RECALL

Section 1. Employees shall notify the Company of any change of address within five (5) days after such change has been effected. They shall receive a receipt

from the Company that such notice has been given. Such notice shall be sent to the Company by United States registered mail or delivered to the Company in person. The Company shall be entitled to rely upon the address shown upon its records.

Section 2. When the seniority list in any department is exhausted, when recalling employees back to work, it is agreed that before any new employee shall be hired, employees laid off in any other department who are qualified to perform the required services shall be called in to such departments to work as new employees until such time as said employees may be called back to work in their own departments by virtue of their seniority therein. Seniority shall be accumulative during layoffs.

ARTICLE VIII
PROMOTIONS

Section 1. It shall be the policy of the Company to advance employees to better jobs by seniority. In filling a new job or vacancy, a determination of practical ability and proper ability to perform services on such new job or vacancy shall be made by the Company and approved by the Shop Committee. Job openings shall be posted until the end of the second business day. Postings shall expire four (4) weeks after posting is removed from the bulletin board. Jobs need not be filled during the four (4) week period, only assignments to jobs must be completed. Employees who are upgraded to a new classification shall be ineligible for any new vacancies for a period of three (3) years where training is required or for eight (8) months if no training is required except by mutual agreement of the Management and the Shop Committee.

Section 2. When the Company determines that an opening in the inspection supervisor classification exists for which bargaining unit members may apply, the Company will review applicants on the basis of their respective merit, ability, and capacity to do the required work. Where merit, ability, and capacity among the applicants as determined by the Company is equal, then seniority will determine the successful applicant.

Section 3. Foremen promoted from the ranks and demoted again shall be allowed to work on the basis of their seniority. Foremen shall accumulate seniority effective January 5, 1980.

Section 4. The Company reserves the right to advance employees of the Company into clerical or other positions not covered by this agreement. In the event the Company shall select any of its hourly rated employees for such position, and it shall thereafter be determined by the Company that said employees are not suited for those positions, then said employees shall be returned to their original occupations and their seniority shall accumulate in the meantime.

ARTICLE IX
TRANSFERS

Section 1. When vacancies occur on the day shift on a job classification, the employee with the most seniority on the night shift in that job classification will be given the vacancy, at his option, and the new employee hired will replace him on the night shift. This applies only when an experienced man is hired from the outside.

Section 2. The Company shall maintain separate seniority lists for the toolroom and production employees. An employee transferring from the production to the

toolroom shall accumulate seniority in the toolroom from the first day he enters the toolroom. When it is necessary to reduce the working force in the toolroom, the employee who has transferred from production will be returned to his original group in place of being laid off with total accumulated seniority.

Section 3. An employee who is transferred to another classification by reason of his exercise of his seniority rights shall assume the rate of pay for the classification to which he is transferred.

Section 4. An employee who transfers to any job, and who fails to make good on that job or is dissatisfied with it, forfeits his right to displace any other employee who has been promoted in the meantime. He will assume the classification of General Factory Worker and must wait until another vacancy is posted for which he is eligible. A transferred employee who is dissatisfied with his new job must notify his foreman within thirty (30) days of the starting date to that effect.

Section 5. The trial period during which it can be determined whether an employee is capable of handling a new job shall not exceed six (6) months.

Section 6. In the event an operation in any department is discontinued, employees on such operation shall be assimilated by the rest of the department according to their seniority and ability.

Section 7. The Company may hire an experienced worker for a replacement or for a new job if there is no person on the seniority list who has the necessary qualifications of the job and proficiency to do immediately such job without training — no posting. The Company shall notify the Shop Committee two (2) days prior to the starting date when a new employee is to be hired under this section.

Section 8. When new jobs are placed in production and can not be properly placed in existing classifications by mutual agreement and whenever an existing job changes substantially after the effective date of the current agreement, Management will set up a new classification and rate covering the job in question and will designate it as temporary. A copy of the temporary rate and classification name will be furnished to the Shop Committee. Within thirty (30) days after such a new job as defined above has been placed into production, the Company and the Union will negotiate the rate and classification. When such negotiations have been completed, they shall become part of the Local Wage schedule and the negotiated rate, if higher than the temporary rate, shall be applied retroactive.

Section 9. Employees shall not be allowed to down grade (that is accept a job of lower rate of pay) below 1/2 SS Boltmaker rate except under provisions of Article VI within three (3) years from the time they upgraded. Exceptions may be made only if acceptable to both the Company and the Shop Committee.

Section 10. When the Company determines that an opening in the toolroom exists for which bargaining unit members may apply, the Company will review applicants on the basis of their respective merit, ability, and capacity to do the required work. Where merit, ability, and capacity among the applicants as determined by the Company is equal, then seniority will determine the successful applicant.

ARTICLE X
LEAVES OF ABSENCE

Section 1. Upon properly written application, written leaves of absence for a specific purpose and specified period of time may be granted employees without loss of seniority at the discretion of the Company and the Shop Committee, a copy of such leaves of absence to be given to the Shop Committee. Leaves of absence are to be limited to a period of three (3) months, subject to renewal. Falsification on the application shall be sufficient cause for discharge of the employee. A notice of such leaves of absence shall be posted on the bulletin board for forty-eight (48) hours after being granted.

Section 2. Members of the Union elected to Union positions or selected by the Union to do work which takes them from their employment with the Company, shall at their request receive leaves of absence. Upon their return, they shall be reemployed at work generally similar to that which they did last prior to the leave of absence with seniority accumulated during each leave of absence. At no time shall members of the Union, either elected or selected by the Union to do work which takes them from their employment, exceed one (1) in number, plus one additional member for up to thirty (30) days.

ARTICLE XI
HOURS OF WORK AND OVERTIME

Section 1. The regular work day shall be eight (8) hours and regular work week forty (40) hours.

Section 2. Employees shall receive time and a half for all work over eight (8) hours in any one day, for over forty (40) hours in any one (1) week, and for work on Saturday; provided, however, that hours worked after

midnight of Friday which are part of the regular Friday night shift shall be paid for at straight time rates for the first eight (8) hours of the shift.

Section 3. Employees shall receive double time for Sunday. They shall also receive double time in addition to their holiday pay for all work done on the following days: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas, and for any hours in excess of four hours on each shift on December 24 and December 31. Employees shall receive time and a half for other holidays which the Company may schedule to provide the flexibility to meet customer demands.

Section 4. The allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis, thus eliminating any double overtime payment.

Section 5. Employees shall not be required to work after five (5) p.m. on December 24 and December 31.

Section 6. The regular work week shall start at 12:01 Monday morning and end Friday 12:00 midnight inclusive.

Section 7. The Company shall specify a starting and quitting time for all operations. The Company shall post notice of permanent changes in starting and quitting times three (3) days prior to the effective date.

Section 8. All employees shall be paid on Company time on Thursday of each week. If a payday falls on a holiday or a department is not working on that day, employees in such department shall receive his/her pay on the day before.

Section 9. When regular shifts extend into Saturday, Sunday, or legal holidays specified herein, all time be-

yond one (1) hour worked within such days shall be paid at overtime rates, except as provided in Section 2 immediately above.

Section 10. Overtime work shall be equitably distributed in each department as nearly as possible by applying a policy of rotation together with the ability of the employees to perform the work.

ARTICLE XII
CALL-IN PAY

Section 1. In the event that an employee reports for work at his regular shift without having had proper notice not to report, he shall be given at least four (4) hours work, or if no work is available, he shall be paid for four (4) hours at the occupational rate of the job for which he was scheduled to report. The Company may at its discretion assign the employee to any work available which he is able to perform, and if the employee refuses such assignment, he shall not receive any pay. In the event of fire, storms, floods, power breakdowns, work stoppages, or other causes beyond the control of the Company which interfere with work being provided, the provisions of this section will not apply.

If an employee is absent from work on the previous scheduled work day, he shall not be entitled to the benefit of the provision if proper notification has been given other employees.

ARTICLE XIII
WAGES

Section 1. When a general factory worker is permanently transferred to a higher rated job he shall receive the minimum rate for the job to which he is transferred. He shall receive fifteen cents (15¢) per hour increase each three (3) months, not to exceed twenty-five (25¢) below top for the job.

Section 2. Employees who are permanently transferred to a lower rated job shall receive one (1) week notice before the transfer is made, and upon the transfer will take the rate of the new job. If one (1) week notice shall not be given, the permanently transferred employee shall be paid for the first week at the rate of his previous job, after which first week he shall receive the rate of the job to which he has been transferred. This section does not apply when the Company downgrades an employee for non-satisfactory job performance or the employee requests the downgrade.

Section 3. The employees (after (60) days for new employees) will be paid for the following holidays:

1985 — Memorial Day, Fourth of July, July 5th, Labor Day, Thanskgiving Day, Day after Thanksgiving, December 23, December 24, December 25, December 26, December 27, December 30, December 31; *1986* — January 1.

1986 — Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, December 24, December 25, December 26, December 29, December 30, December 31; *1987* — January 1, January 2.

1987 — Memorial Day, July 3rd, Labor Day, Thanksgiving Day, Day after Thanksgiving, December 24, December 25, December 28, December 29, December 30, December 31; *1988* — January 1.

Provided that all pay for holidays is based on the average number of straight time hours worked on the full work day preceding and full work day following the holiday. The average is the number of straight time hours for

which the Company will give holiday pay, multiplied by the employee's straight time rate with no overtime or shift premium included therein; it equals the amount of the employee's compensation for the holiday.

Night shift premiums will be added to holiday pay for all holidays except those holidays falling within the entire Christmas-New Year period.

Furthermore, in the instance of the four (4) or more holidays falling on consecutive days we will use the four (4) scheduled work days prior to the holidays and the first scheduled work day after the holidays and pay for each day of the holiday the average number of straight time hours worked in the aforementioned five (5) days. (This paragraph only effective when an employee missed the day before or day after.)

However, the amount of holiday pay is not to exceed eight (8) hours for the full holiday.

ARTICLE XIV
VACATIONS

Section 1. Each employee who on June 1 has one or more years seniority shall be entitled to a vacation payment as follows:

SENIORITY	*NUMBER OF HOURS PAY*
One Year*	20 hours
One year but less than three	60 hours
Three years but less than five	80 hours
Five years but less than ten	100 hours
Ten years but less than fifteen	120 hours
Fifteen years but less than twenty	140 hours

* Employees who are hired between June 1 and November 1 shall receive twenty (20) hours pay on their first anniversary date.

SENIORITY	*NUMBER OF HOURS PAY*
Twenty years but less than twenty-five	160 hours
Twenty-five years but less than thirty	180 hours
Thirty years and over	190 hours

Section 2. For determining vacation seniority all employees shall use June 1 as a base.

Section 3. Vacation pay shall be computed at the employees regular hourly rate, and no overtime, shift premium, or holiday time shall be included therein.

Section 4. Periods of absence from work for any reasons other than compensable injury in excess of thirty (30) continuous days will be deducted and an adjusted vacation pay made for time actually worked. An employee absent from work for a continuous period of thirty (30) days or longer due to sickness or off-the-job injury shall receive vacation credit for the first thirty (30) days of that absence. An employee who does not work, at least ten (10) full days during the vacation year for any reason including loss of work due to a compensable injury shall not receive any vacation pay.

Section 5. Vacation will be taken at any time before December 1 of that year (may be taken after December 1 with Company approval), but must be arranged with the approval of the foreman of the department who will be governed by the order in which requests are made and conditions in regard to work in that department. The employee shall receive his vacation pay at the time he leaves on his vacation or June 1 whichever is later, but no later than the last working day of August.

Section 6. An employee who has one (1) year or more seniority and for any reason is leaving the employ of the Company, shall receive the vacation pay he would be entitled to according to the seniority as outlined in Section 1, prorated to time actually worked.

ARTICLE XV
INSURANCE

Section 1. The Company will establish an insurance program either under a group insurance policy or policies issued by an Insurance Company or Insurance Companies. A copy of the insurance program is attached and made a part of the agreement. The Company may at its option self-insure Life and S/A Benefits.

Section 2. The Company agrees to pay the cost of furnishing the coverage provided for in the insurance program referred to above and shall receive and retain any divisible surplus, credits or refunds or reimbursements under whatever name made on contracts for insurance.

Section 3. The Company by payment of the premiums of any insurance policy or policies issued by an insurance company or companies selected by the Company in accordance with the program, shall be relieved of any further liability with respect to the benefits of the program under such policy or policies.

Section 4. Unless otherwise specifically provided herein, the Company shall pay all expenses incurred by it in the administration of the program.

Section 5. No matter respecting the program or any difference arising thereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Company and the Union. The

Company may at its option change insurance carriers to one with comparable coverage. A change in the health insurance carrier is subject to the grievance procedure prior to any change on the basis of comparability only.

Section 6. This agreement and insurance program shall continue in effect until the termination of the collective bargaining agreement of which this is a part.

Section 7. The insurance program summarized here will provide coverage for the eligible employees as follows:

Life Insurance Benefits — Eighteen (18) months new hires $30,000.00
Accidental Death and Dismemberment

Sickness and Accident Insurance — Eighteen (18) months new hires January 5, 1985 ..... $205.00

Hospital and Surgical Benefits — Three (3) Months new hires

Prescription Drug Plan — Eighteen (18) months new hires ..... $3.00 deductible

Dental Care Plan — Eighteen (18) months new hires

Vision Care — Eighteen (18) months new hires

The details of the above will be found in the contracts furnished by the insurance company or companies and the rights of employees covered under these contracts will be found therein and become a part of this agreement.

Section 8. The employee is responsible for notifying the Company immediately when there is any change in their or their family's status with regard to all insurance policies or changes in information previously furnished to the Company.

Section 9. Employees who are laid off shall have the option to pay the first two premiums for basic health insurance (including vision) at the group rate. Payment must be made to the Company by the 20th day of the month in which the Company payment is due.

Section 10. All benefits cease when an employee is off work for one year.

ARTICLE XVI
GENERAL

Section 1. The Company agrees to make every effort to provide proper safety and sanitary conditions and devices in the plant. The use of safety glasses and hearing protection in the plant will be mandatory and will be enforced 100 percent as a condition of employment.

Section 2. When an employee who has been disabled and not working due to compensable injury or occupational disease is able to return to work, he may be placed at work by the Company on any job in its plant regardless of such employee's seniority rating. All employees of the Company waive their seniority rights to such extent in favor of such an employee who is able to and does return to work; provided, however, that such an employee shall have such preferred seniority only for ninety (90) days after his return to work. Whenever practical, such employee shall replace a junior employee. After such ninety (90) days, a review of the case shall be made by the Company and the Shop Committee to determine whether such ninety (90) days shall be extended.

Section 3. The Company will provide bulletin boards for the use of the Union to be located in central locations. All Union notices must be approved and posted

by the Plant Manager or someone designated by him. The Union agrees that no Union notice shall be posted in any other part of the plant.

Section 4. Any employee who has been injured during working hours and is required to leave the plant for treatment or is sent home for such injury shall receive payment for the remainder of the shift on which the original injury occurred at his regular rate of pay providing a doctor or nurse designated by the Company advised that such employee is unfit for further work on that shift. An employee who declines light work within his capability forfeits pay for the balance of the shift.

Section 5. Nothing herein shall permit the Union or any of its members to assume authority to officiate in a managerial or supervisory capacity. The products to be manufactured, the location of the plant, the methods of manufacturing are solely and exclusively the responsibility of the Company.

Section 6. No foreman or assistant foreman shall perform the regular work of an employee, but this shall not be construed to prevent a member of the management from performing operations where an emergency arises, or for the purpose of investigation, inspection, experimentation, information, instruction, or otherwise as may be necessary in the discharge of their supervisory duties. Foremen shall when working on an employee's assigned machine have machine operator present to observe as much as possible.

Section 7. The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, of production at the Company's

plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth therein. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out.

Section 8. It is understood and agreed that in the event of any strike, work stoppage, or interruption or impeding of work on the part of the employees during the life of the agreement, there shall be no financial liability on the part of the International Union, the Local Union, or any of their officers, agents, or members. The sole recourse and exclusive remedy for the employer in such event shall be to impose disciplinary measures upon employees involved.

Section 9. It is agreed that production must be maintained and failure of an employee to do so will cause him or her to be disciplined. Where disciplinary action is involved, a steward will be notified before action is taken.

Section 10. Conditions covered in this contract are subject to State and Federal laws and rules and regulations imposed by any government agency.

Section 11. Economic issues shall not be a matter of negotiations within the period of this contract unless it is by mutual agreement between the Company and the Union.

Section 12. The parties believe that this contract is not in any part contrary to the provisions of any State or Federal law. In the event that it should be later found that a clause, sentence, or paragraph of this agreement is in derogation of the provisions of any State or Federal law, that portion of the contract shall give way to the provisions of the State or Federal law, and if necessary to revise such clause, sentence, or paragraph, the parties will meet and negotiate the same, but all provisions of the contract not so in derogation shall continue in full force and effect without change until the termination of the contract.

Section 13. Employees shall notify the Company in case it is necessary for them to be absent from work. This notice is to be given on the day the employee is absent or previously and include reason for absence and expected duration. Such notice shall be given each day the employee is absent. Failure to comply with this rule makes the employee subject to disciplinary action.

Section 14. Whenever the masculine pronoun is used in this agreement, the feminine pronoun is also included.

ARTICLE XVII

DURATION

Section 1. This agreement shall become effective on the 5th day of January 1985 and remain effective until January 5, 1988, and from year to year thereafter unless written notice is given by either party to the other of its desire to terminate or modify the agreement at least sixty (60) days before the termination date or anniversary date thereof.

RING SCREW WORKS
H. R. CHAPPELL, JR., G. D. SANDER

International Union United Automobile, Aircraft & Agricultural Implement Workers of America, Local Union No. 771

R. HEIDE, Pres. UAW Local No. 771

A. STIEBER, Int'l. Rep., Region 1B, UAW

SHOP COMMITTEE R. LARAWAY, G. SCHAAL, D. WELSH, L. VROEGINDEWEY, K. HOLYFIELD, R. NANCARROW

APPENDIX A
Rates as of January 5, 1985
excluding 5¢ per hour Cost-of-Living float

CLASSIFICATION	*Top Rate*	*Afternoon and Midnite Shift Prem.*	*Rate Range*
Header Set-Up Heavy Trimmer Set-Up Roller Set-Up	14.04	.55	1.15
Boltmaker 1/2 S.S. Boltmaker 3/8 5 Sta. Boltmaker 1/2 5 Sta.	14.17	.56	1.15
Boltmaker 3/8 L.S. Boltmaker 3/8 & 5/16 Boltmaker 1/2 L.S. Boltmaker 8L4 Boltmaker 3/4	14.41	.56	1.15
Boltmaker 3/8	13.85	.54	1.15
Production Leader	14.46	.56	1.15
Chief Ship Clerk	13.66	.54	1.15
Quality Control Supv.	14.65	.57	1.15
Machine Operator	12.40	.40	1.20
Janitor & Sweeper	12.29	.40	1.20
General Factory Worker 15¢ each 2 months	12.62	.50	1.95
Heat Treat Operator	13.71	.54	1.15

APPENDIX B — TOOLROOM EMPLOYEES
Rates as of January 5, 1985
excluding 5¢ per hour C -t-of-Living float

CLASSIFICATION	*Top Rate*	*Shift Prem.*	*Rate Range*
Toolmaker Repairman	15.23	.59	.75
Toolmaker	15.07	.59	.75
Toolroom Machine Hand**	14.78	.58	.75
Learner*	13.60	.53	1.05

*15¢ each 3 months
**15¢ each 8 months

For the second and third year of the contract a payment will be paid on January 15, 1986 and January 15, 1987. The payment will be computed at 2% of the employees earned wages only for hours worked during the previous year.

APPENDIX "C"
Cost-of-Living Allowance and
Annual Improvement Factor

Cost-of-Living Allowance

Effective at the beginning of the first pay period commencing on or after April 5, 1985 and thereafter during the period of this Agreement, each employee covered by the Agreement shall receive a cost-of-living allowance set forth.

The cost-of-living shall not be added to the base rate for any classification, but only to each employee's straight time earnings. The cost-of-living allowance shall be taken into account in computing overtime premium, night-shift premium, vacation payments, holiday payments, and call-in pay.

Basis for Allowance

The cost-of-living allowance will be determined and redetermined as provided below in accordance with changes in the official revised Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. All Cities Average) published by the Bureau of Labor Statistics, U.S. Department of Labor (1967 = 100) and hereinafter referred to as the BLS Consumer Price Index.

Continuance of the cost-of-living allowance shall be contingent upon the availability of the BLS Consumer Price Index in its present form and calculated on the same basis as the BLS Consumer Price Index for November 1984.

During the life of this Agreement, any adjustment in the cost-of-living allowance that is in excess of five cents (5¢) per hour shall be made at the following times:

Effective Date of Adjustment	*Based Upon Three-Month Average of the BLS Consumer Price Index For:*
First pay period commencing on or after April 5, 1985 and at three-month intervals thereafter to October 5, 1987	December 1984, January and February 1985 at three-month intervals thereafter to June, July and August 1987

In determining the three-month average of the Indexes for a specified period, the computed average shall be rounded to the nearest 0.1 Index point.

The amount of the cost-of-living allowance shall be five cents (5¢) per hour effective with the effective date of this Agreement. Effective April 5, 1985, and for any

period thereafter, as provided above, the cost-of-living allowance shall be a 1-cent adjustment for each 0.3 change in the Average Index for the appropriate three months indicated above with the three month average of September, October and November 1984 as a base. In addition all rates of pay General Factory Worker and below shall receive 1/2 COLA adjustments until such time as the General Factory Worker rate equals 80% of the 1/2 SS Boltmaker rate.

Adjustment Procedure

In the event that Bureau of Labor Statistics does not issue the appropriate Consumer Price Index on or before the beginning of one of the pay periods referred to, any adjustments in the cost-of-living allowance required by such appropriate Indexes shall be effective at the beginning of the first pay period after receipt of the Indexes.

No adjustments, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the BLS Consumer Price Index for any month or months specified above.

The parties to the Agreement agree that the continuance of the cost-of-living allowance is dependent upon the availability of the monthly BLS Consumer Price Index in its present form and calculated on the same basis as the Index for November 1984, unless otherwise agreed upon by the parties. If the Bureau of Labor Statistics changes the form or the basis of calculating the BLS Consumer Price Index, the parties agree to request the Bureau to make available for the life of this Agreement, a monthly Consumer Price Index in its present form and calculated on the same basis as the Index for November 1984.

APPENDIX "D"

Pension Plan

Subject to approval of the Board of Directors and Stockholders, the Company will revise the pension plan established in 1955, hereinafter referred to as the "Plan", as follows:

(1) An insurance company shall be designated by the Company, and a contract executed between the Company and such insurance company, under the terms of which, a pension fund shall be established to receive and hold contributions payable by the Company, interest, and other income, and to pay the pensions provided by the Plan.

(2) The Company by payment of the contributions or amounts provided in the above mentioned insurance company contract shall be relieved of any further liability, and pensions shall be payable only from the insured fund.

(3) In the event of termination of the Plan, there shall be no liability or obligation on the part of the Company to make any further contributions to the pension fund. No liability for the payment of pension benefits under the Plan shall be imposed upon the Company, the Officers, Directors, or Stockholders of the Company.

(4) The Company reserves the right to amend, modify, suspend, or terminate the Plan by action of its Board of Directors provided, however, that no such action shall alter the Plan or its operation, except as may be required by the Internal Revenue Service for the purpose of meeting conditions for qualification and tax deductions under Sections 401, 404, and 501(a) of the Internal Revenue Code, in respect of employees who are represented under a collective bargaining agreement in contravention of the provisions of any such agreement pertaining to pension benefits as long as any such agreement is in effect.

(5) Principal provisions of the pension plan are shown below, but the individual booklets which will be furnished each participant contain full information and will be based on the contract entered into with the insurance company.

Effective Date

January 5, 1985

ELIGIBILITY:

All employees who will have completed ten (10) or more years of continuous credited service at retirement.

NORMAL RETIREMENT DATE:

The normal retirement date of all employees will be age sixty-five (65). All employees will be retired on the first day of the month following their 70th birthday.

EARLY RETIREMENT:

If you have completed at least ten (10) years of credited service, you may retire between age sixty (60) and sixty-five (65). You may elect to receive:

(a) A pension at age sixty-five (65) based on your credited service up to your early retirement date.

(b) A pension beginning at your early retirement date based on your credited service up to that date but reduced in accordance with the early retirement table as detailed in the master pension contract.

Medical coverage for employees who elect early retirement with fifteen (15) years of service at age sixty-two

(62) or twenty-five (25) years of service at age sixty (60) for the life of the retiree only. In order to receive payment, retiree may not be employed full time nor earn more than $6,000.00 per year if self employed or working part time.

RETIREE MEDICAL COVERAGE:

Retirees will be reimbursed for maximum $15.50 monthly cost of Medicare from the pension fund. Future retirees will be covered by health insurance carrier with same health coverage as active employees. (Benefits will be coordinated with Medicare and all benefits will cease upon death of retiree.)

RETIREMENT INCOME:

Pensions will be in the amounts set forth below per month for each year of credited service at retirement with a maximum of thirty-seven (37) years. Current retirees 1980 through 1984 thirty-five (35) years maximum 1974 through 1979 thirty-three (33) years maximum. 1973 and prior thirty (30) years maximum. An employee retiring with less than ten (10) years of credited service is not eligible for benefits.

	Future 1/5/85 Per Mo.	*Future Present Per Mo.**
10 years but less than 15	14.00	10.20
15 years but less than 20	15.00	10.40
20 years but less than 25	16.00	10.60
25 years but less than 30	17.00	10.80
30 years and over	18.00	11.00

VESTED PENSION RIGHTS:

Minimum Continuous Credited Service — 10 years

* Retirees' increased benefits will be payable as soon as the insurance company can revise program but not later than March 5, 1985.

DISABILITY INCOME:

Employees with at least fifteen (15) years of service who are between the ages of 40 and 65 will be eligible for a pension of $15.00 per month for each year of service in the event of total and permanent disability. At age 65, the employee will receive the regular retirement income based on service at disability date. The maximum payment shall be 25 years of service, less workmen's compensation benefits or any other disability payments as provided in the master pension contract, exclusive of social security disability payments. Subject to Internal Revenue Service approval.

(6) No matter respecting the plan or any differences arising hereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Company and the Union.

CONTINUED LIFE INSURANCE:

(7) Continued life insurance shall be provided for employees who are retired under the pension plan in the amount of $5,000.00

VACATION ATTENDANCE BONUS:

Subject to provisions hereafter enumerated, the Company will, beginning with the 1986 vacation year, pay a vacation attendance bonus during the vacation qualifying period of June 1 to June 1, provided that the total scheduled work day hours of work (Monday thru Friday only) during the qualifying period shall be in excess of: 1890 hours for a 2% bonus, 1990 for a 3% bonus, 2140 hours for a 4% bonus of gross pay.

1. Gross pay will be the gross of the 52 weekly pay periods ending prior to June 1 of the vacation year;

2. Each Employee will be allowed five (5) days of absence without penalty;

3. Any vacation days in excess of the following will be considered as absences: (Seniority based on June 1 to June 1)

   One (1) year seniority but less than three years — Five (5) consecutive work days

   Three (3) years seniority but less than ten (10) years — Ten (10) consecutive work days or two periods of five (5) consecutive work days

   Ten (10) years seniority or more - - Fifteen (15) consecutive work days or ten (10) consecutive work days and five (5) consecutive work days

   Twenty (20) years seniority or more — Twenty (20) consecutive work days or fifteen consecutive work days plus five (5) consecutive work days or ten (10) consecutive work days plus two (2) periods of five (5) consecutive work days.

4. Any absence of a full work day (Monday through Friday and Saturdays (see No. 7) where entire plant is scheduled Saturday) in excess of allowed absences shall reduce his vacation bonus by $120.00 per day. This change effective June 1, 1985, and thereafter. In addition, any combination of tardiness or other straight time lost which adds to eight (8) hours shall be considered a day of absence for eight (8) hours of straight time lost. Any tardiness shall be charged a minimum of one-half (½) hour. Tardiness being any time (one minute) after starting time. Time missed prior to or after vacation periods which extends such vacation period shall reduce bonus by two times normal rate.

5. Time lost due to compensable injury will not be deducted.

6. Vacation attendance bonus to be paid July 1 or when employee goes on vacation, whichever is later, but not later than the last working day in August.

7. An employee who has worked less than one-half (½) of the scheduled Saturdays and holidays (Article XI, Section 3) shall be charged one day of each absence below the one-half (½) attendance requirement. In order to be credited with working a scheduled Saturday, the employee must work a minimum of seven (7) hours.

8. The employees shall have five (5) days per year (non-accumulative) over the life of the contract plus a total of eighteen (18) days which the Committee may make advanced application for credit during the life of the contract for approved Union business.

9. Computed bonuses which total less than $250.00 shall not be paid.

BEREAVEMENT PAY:

In the event of death in the immediate family of an employee (new employee after one year), said employee, upon proper application in writing and presentation of proof of death, shall be compensated for any scheduled working time lost Monday through Saturday (in order to qualify for Saturday pay, employee must have worked three (3) of last six (6) scheduled Saturdays) based on eight (8) hour days at straight time. This benefit is intended to compensate an employee only for scheduled working time necessarily lost by the death to the extent of and limited by three (3) scheduled working days on an eight (8)

hour straight time basis. Immediate family shall mean spouse, child, mother, father, brother, sister, natural grandchild, spouse's child, mother, father, sister, brother. This benefit to begin at the time of death and end on the day services are held and is not intended to compensate for time the employee may request after the service or other reasons. When Heat Treat Operators are scheduled seven (7) days they shall be eligible to receive Bereavement benefits for scheduled Sundays.

JURY DUTY:

The Company shall pay an employee (after one (1) year) who necessarily loses time from his job because he has been summoned to jury duty, as certified by the Clerk of the Court, the difference between his straight time average earnings for eight (8) hours per day and the daily jury fee. Maximum of (40) hours per week. No payment to be made if employee volunteers for jury duty. Jury duty shall not exceed forty-five (45) calendar days.

In order to be eligible to receive any credit for the time missed, an employee who is dismissed prior to 12:30 or is scheduled for only a part day shall report to work for the balance of the shift. Afternoon shift employees shall work the number of hours, beginning at his regular starting time, that a day shift employee would have been able to work.

January 8, 1980

Mr. Marian Czarnomski
Local 771 U.A.W.
20424 John R
Detroit, Michigan 48203

Dear Mr. Czarnomski:

In the course of 1980 negotiations the Company and Union agreed that the Company could schedule non-legal holidays as work days and that compensation for these days would be at time and one half. The Company additionally agreed that employee discipline would not be given for missing one of these scheduled days.

Additionally, if an employee is specifically asked if he (or she) is going to work scheduled or part shop operation overtime and the individual does not notify the Company prior to the starting time of the scheduled day, that he (or she) will not work, such employee shall be subject to disciplinary action.

Yours very truly,

RING SCREW DIVISION
H. R. CHAPPELL, JR.
President

HRChr/cs

No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS AND
LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

REPLY BRIEF FOR PETITIONERS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-1166

ARTHUR GROVES, BOBBY J. EVANS AND
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---

REPLY BRIEF FOR PETITIONERS

ARGUMENT

1. (a) Respondent's contention that the decision below is consistent with the national labor policy (Resp. Br. 4-7) rests on a false premise concerning the substance of the agreement between the Union and the Company.[1] Respondent says: "Petitioner's Union bargained for and

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[1] Throughout this Reply Brief, "Pet." will refer to the Petition for a Writ of Certiorari herein, including the Appendix thereto; "Resp. Br." will refer to Respondent's Brief in Opposition to the Petition.

agreed to the strike/lock-out option as the final step in dispute resolution if the grievance procedure failed to resolve the matter." *Id.* at 7. But as the Court of Appeals found, the "agreement does *not* expressly indicate whether a strike is the only option the Union has if the employer refuses to submit a grievance to arbitration." Pet. 8a, emphasis added. Nothing in the provisions of the agreement quoted as Resp. Br. 1-2 or in Respondent's Appendix is to the contrary. Indeed, although Respondent strives mightily to convey the opposite impression there is nothing in the record here which expressly precludes the Union or the employees from bringing suit to enforce the contract if (1) an employee grievance is not resolved between the Union and the Company in the course of the grievance procedure and (2) neither party exercises its contractual right to resort to economic weapons to resolve the grievance.

When an employer made the identical argument in *Associated General Contractors* v. *Illinois Conference of Teamsters ("Teamsters")*, 486 F.2d 972 (7th Cir., 1973), then-Judge Stevens wrote in immediately pertinent part:

> Unquestionably "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." See *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566. But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do. [486 F.2d at 976, quoted more fully at Pet. 6-7.]

The present case, as we develop in the Petition, involves the same question of contract construction that was before the Court in *Teamsters*, for it is as true here as it was there that "there is no plain language in the contract compelling the parties to use force instead of reason in resolving their differences." *Id.* In this respect, the agreement differs fundamentally from that which was at issue in the Seventh Circuit decision relied on at Resp. Br. 15-16, *Huffman* v. *Westinghouse Elec. Corp.*, 752 F.2d 1221 (1985). As the *Huffman* court explained in distinguishing *Teamsters* and another Seventh Circuit decision: "The crucial difference between the contracts at issue in the cases discussed above and the one in this case is that this contract contains a finality provision." *Id.* at 1224.[2]

Consequently, while we of course fully accept the policy of § 203(d) of the Labor-Management Relations Act of 1947 ("LMRA"),[3] Respondent's reliance thereon is entirely misplaced. Unavailable to Respondent for the same reason are two other well-settled rules, which are derived from § 203(d): that employees are bound by the grievance procedure for which their Union bargains (Resp. Br. 5-7), and that "employees who are unhappy with the final results of their grievance procedure" may not "seek review in the federal courts" (*id.* at 5).[4]

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[2] In *Huffman*, the finality provision read:

> The Company's reply to a grievance will be considered final at any level of the grievance procedure (local or appeal) and the grievance closed, if written notification to the contrary is not received within thirty (30) days of the date of such reply. [*Id.* at 1222.]

The agreement in the present case has no similar language.

[3] Section 203(d) provides in pertinent part:

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

[4] See, *e.g.*, *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 653 (1965); *Hines* v. *Anchor Motor Freight*, 424 U.S. 554, 562-63 (1976) (expressly citing and relying on § 203(d)).

(b) Point II of the Brief in Opposition is also predicated almost entirely on the fallacious theory that the employees here had a "final resolution of [their] grievance through the grievance procedure," and on § 203(d). Resp. Br. 10; see also *id.* at 11-16. As we showed in the Petition, that theory assumes the answer to the contract interpretation question to be decided in this case. And Respondent does not even do business with the Court of Appeals decisions that are contrary to its position.[5]

2. In short, application of § 203(d) in any given case requires that the "method agreed upon by the parties" be ascertained. And where the parties have not reached a "final adjustment" by that method, § 203(d) does not authorize, let alone require the courts to disclaim the jurisdiction vested in them by LMRA § 301. It is the policy embodied in that provision which should control the decision of the question presented herein. Respondent's felt necessity to reduce the seminal decision in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, to a holding with respect to the enforceability of arbitration agreements (Resp. Br. 5-6), only confirms how drastically its position—and that of the court below—departs from § 301's basic policy. See Pet. 8-11.

Thus, the conflict between the Sixth and Fifth Circuits, on the one hand, and the Seventh, Ninth and Tenth, on the other (Pet. 5-7), should be resolved not only to achieve "uniform application of federal law in

[5] While *Breish* v. *Ring Screw Works*, 397 Mich. 586, 248 N.W. 2d 526 (1976), disscused at Resp. Br. 11-13, is in accord with those decisions, *Breish* does go one step further than is necessary to decide the present case. There the Union did *not* join in the employees' suit. Here the Union representative exercised its authority to support the grievance by joining in this suit. Thus, in this case in contrast to *Breish*, no question arises with respect to *Anchor Motor Freight, supra*, or *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953) cited at Resp. Br. 14.

the Circuits" (Resp. Br. 8; cf. Pet. 4-5), but also to vindicate the true national labor policy.[6]

CONCLUSION

For the foregoing reasons and those stated in the Petition for a Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

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[6] Plaintiff's assertion that provisions which release the parties from their no-strike and no lock-out pledge where a grievance has not otherwise been adjusted "arise in a very small percentage of collective bargaining agreements in this country" (Resp. Br. 9) is unsupported by empirical evidence. And, in any event, the construction that under such agreements a grievance can be vindicated only by strikes to the exclusion of the statutory judicial remedy, is so patently unsound in principle, as three Circuits have recognized, that it should be promptly disapproved.

No. 89-1166

IN THE

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OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 29, 1990
CERTIORARI GRANTED MARCH 19, 1990

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 87-CV-2988-DT

Hon. Julian A. Cook, Jr.

ARTHUR GROVES and LOCAL 771, U.A.W.,
Plaintiffs,

v.

RING SCREW WORKS, a Michigan corporation,
FERNDALE FASTENER DIVISION,
Defendant.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1987		
Aug 10	1	PETITION for removal from Oakland County Circuit Court w/attachments, removal bond for $250.00 cash, receipt #126623, answer of deft to complaint, affirmative defense, exhibits, notice of filing petition and bond for removal and proof of service. dgn
Aug 28	2	NOTICE of taking deposition of Arthur Groves on 9/11/87 @ 9:00 am with proof of service. NSI lh
Sept 8	3	RE-NOTICE Of taking the deposition of Arthur Groves on 10/8/87 at 11AM with proof of service. nsi rh
Oct 14	4	SCHEDULING order, pltf's expert 1/15/88, deft's expert 1/29/88, disc c/o 2/12/88, motion c/o 2/26/88, FPTO 4/18/88, FPTC 4/25/88 @ 2pm, status conf 1/25/88, documents for trial 5/16/88, trial date 5/24/88 @ 8:30am. COOK, J. dgn

DATE	NR.	PROCEEDINGS
1988		
Jan 25	—	STATUS conference held. COOK, J. dgn
Feb 5	5	NOTICE of taking deposition duces tecum 2/11/88 @ 9am of Ronney Bowers, w/proof of service (NSI). dgn
Feb. 6	6	NOTICE of taking deposition duces tecum of Robert Heide 2/11/88 @ 10:30am, w/proof of service (SI). dgn
Feb 12	7	FIRST of interrogatories of deft to pltf w/ proof of service. dgn
Feb 12	8	FIRST requests of deft for production of documents to pltf w/proof of service. dgn
Feb 17	9	NOTICE Of deposition 2/26/88 of Suburban Auto Sales & Repair @ 1pm. and Dr. Moon J. Pak @10am, w/proof of mailing (SI). dgn
Feb 26	10	MOTION of deft for s/j w/brief, exhibits, notice of hearing w/o date and proof of service. dgn
Mar 4	11	ANSWER of pltfs to deft's m/sj w/brief, exhibits, affidavits and proof of service. dgn
Mar 7	12	NOTICE of hearing on d's m/for summary judgment 4/5/88 @2pm, w/proof of service. dgn
Mar 9	13	REPLY brief of deft to pltf's answer to deft's m/sj, w/proof of service. dgn
Mar 28	14	DEPOSITION transcript of Robert Heide, taken 2/11/88. dgn
Apr 5	—	HEARING, on deft's m/for sj, granted. COOK, J. (D. Mosby, CRP) dgn
Apr 8	15	ORDER granting summary judgment by deft. COOK, J. dd 4/11/88 dgn

DATE	NR.	PROCEEDINGS
1988		
Apr 26	16	NOTICE of appeal by Pltf's, from Order dated 4/8/88 (w/copy attached). Fee paid, #184560. mb
Apr 28	17	PROOF of service on NCA to CCA, William Mazey, Terence V. Page & Denise Mosby. mb
Apr 28	18	SERVICE on #16 to CCA. mb

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 87-CV-2989-DT

Hon. Anna Diggs Taylor

BOBBY J. EVANS and LOCAL 771, U.A.W.,
Plaintiffs,

v.

RING SCREW WORKS, a Michigan Corporation,
Defendant.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1987		
Aug 10	1	PETITION for removal from Circuit Court for the County of Macomb with bond for removal in the amount of $250.00 (Receipt #126625), notice of filing petition, and exhibit "A". lh
Aug 10	2	ANSWER by deft., Ring Screw Works to Pltfs's complaint with affirmative defenses. lh
Aug 10	3	PROOF of service for pleading 1 and 2. lh
Aug 28	4	NOTICE of taking deposition of Bobby J Evans on 9/11/87 with proof of service. NSI lh
Sept 8	5	RE-NOTICE of taking deposition and deposition duces tecum of Bobby J Evans on 10/8/87 @ 1:30 pm with proof of service. NSI lh
Nov 10	6	NOTICE of status conference on 2/9/88 @ 4:00 pm lh

DATE	NR.	PROCEEDINGS
1988		
Feb 5	7	NOTICE Of taking deposition of Lee Vroegindewy on 2/11/88 @ 9:45 am with proof of service. SI (Duces Tecum) lh
Feb 5	8	NOTICE Of taking deposition of Lee Vroegindewy and deposition duces tecum on 2/11/88 @ 9:45 pm with proof of service and notice to produce. NSI lh
Feb 5	—	NOTICE of taking deposition and deposition duces tecum of Robert Heide on 2/11/88 @ 10:30 am with proof of service. (See 87-2988, pleading 6). lh
Feb 10	9	ORDER scheduling discovery cutoff date on or before 5/13/88, motion cutoff date 6/13/88, final pretrial conference 7/18/88 @ 3:15 pm, and trial date 8/16/88 @ 9:00 am. TAYLOR, J 2/11/88 lh
Feb 26	10	FIRST set of interrogatories of deft., Ring Screw Works directed to pltfs with proof of service. lh
Feb 26	11	FIRST request of deft., Ring Screw Works directed to pltfs. for production of documents with proof of service. lh
Mar 28	12	NOTICE of filing deposition of Lee Vroegindewey dated 2/11/88 with Proof of service. lh
Mar 28	13	DEPOSITION of Lee Vroegindeway dated 2/11/88. lh
Mar 28	14	NOTICE of filing deposition of Robert J Evans dated 10/8/87 with proof of service. lh
Mar 28	15	DEPOSITION of Robert J Evans dated 10/8/87. lh
Mar 30	16	MOTION Of deft., for summary judgment with brief, exhibits, and proof of service. lh

DATE	NR.	PROCEEDINGS
1988		
Mar 31	17	ORDER setting briefing schedule and date for oral argument on motion by deft., for summary judgment. Responses due on or before 4/18/88, reply brief 5/2/85 and date for oral argument on 5/16/88 @ 9:00 am with proof of service. TAYLOR J DD 4/1/88 lh
OUT OF DATE ORDER		
Mar 28	18	NOTICE Of filing deposition of Robert Heide on 2/11/88 with proof of service. lh
Apr 6	19	NOTICE Of change of hearing date on deft's motion for summary judgment previously scheduled for 5/16/88 @ 9:00, rescheduled for 5/23/88 @ 9:00 am with proof of service. Taylor, J dd 4/8/88 lh
Apr 18	20	ANSWER of pltfs' to deft's motion for summary judgment with brief in opposition and proof of service. lh
Apr 25	21	REPLY Brief of deft., Ring Screw Works, to pltfs' answer to deft's motion for summary judgment with exhibit "A" and proof of service. lh
May 23	—	HEARING granting deft's motion for summary judgment. CRP: Leif Anderson Taylor, J lh
May 25	22	ORDER granting summary judgment of deft., Ring Screw Works. Taylor, J DD 6/2/88 lh
May 27	23	NOTICE of appeal by Pltfs. from Order dated 5/25/88. Fee paid, #185677. mb
Jun 2	24	PROOF of service on NCA to CCA, William Mazey, Terence V. Page & Leif Anderson. mb
Jun 2	25	SERVICE on #23 to CCA. mb

U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT

88-1452

ARTHUR GROVES; LOCAL 771, UAW,
Plaintiffs-Appellants

v.

RING SCREW WORKS, a Michigan Corporation,
FERNDALE FASTENER DIVISION,
Defendant-Appellee

REVELANT DOCKET ENTRIES

DATE	PROCEEDINGS
5/5/88	Civil Case Docketed. Notice filed by Appellant Local 771, Appellant Arthur Groves. Transcript needed: y (jmb) [88-1452]
5/5/88	TRANSCRIPT ORDER FORM filed by William Mazey for Appellant Local 771, Appellant Arthur Groves. Transcript ordered from Denise Mosby on 04/29/88. [88-1452] [10295-1] (srt) [88-1452]
5/6/88	TRANSCRIPT ORDER confirmed by court reporter Denise Mosby for Transcript Order Document [10295-1] transcript involving, Denise Mosby, William Mazey [88-1452] (srt) [88-1452]
5/16/88	APPEARANCE filed by Attorney William Mazey for Appellant Local 771, Appellant Arthur Groves [88-1452] (srt) [88-1452]
5/16/88	PRE-ARGUMENT STATEMENT filed by William Mazey for Appellant Local 771, Appellant Arthur Groves [88-1452] (srt) [88-1452]

DATE	PROCEEDINGS
5/26/88	APPEARANCE filed by Attorney Terence V. Page for Appellee Ring Screw Works [88-1452] (srt) [88-1452]
6/27/88	Appellant MOTION filed to consolidate for briefing and submission cases 88-1452 & 88-1579 . Motion filed by William Mazey for Appellant Local 771, Appellant Arthur Groves. Certificate of service date 6/23/88. [88-1452] (teb) [88-1452]
7/5/88	TRANSCRIPT ORDER completed by court reporter Denise Mosby for Transcript Order Document [10295-1] transcript involving, William Mazey. Number of pages: B. 1 volume [88-1452] (srt) [88-1452]
7/7/88	CERTIFIED RECORD filed, Volumes include 00 Sealed, 01 Tr, 02 Depo 01 Pl. [88-1452/1579] (ert) [88-1452]
7/11/88	ORDER filed to consolidate for briefing and submission cases 88-1452 & 88-1579 [88-1452]. (teb) [88-1452]
7/11/88	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 8/23/88 in 88-1452, in 88-1579; appellee brief due 9/26/88 in 88-1452, in 88-1579; appendix due 10/19/88 in 88-1452, in 88-1579 [88-1452, 88-1579] (ert) [88-1452 88-1579]
8/1/88	CERTIFIED SUPPLEMENTAL RECORD filed Volumes included: 00 Sealed; 01 Pl; 01 Tr.; 01 Dep; 00 Ex. [88-1452, 88-1579] (cf) [88-1452 88-1579]
8/22/88	BRIEF RETURNED to William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579. Reason: references. [New briefing schedule set] [88-1452 , 88-1579] (las) [88-1452 88-1579]

DATE	PROCEEDINGS
8/22/88	BRIEFING LETTER SENT resetting briefing schedule: appellant brief due now 9/6/88 in 88-1452, in 88-1579 [Refer to ID# 28103] (las) [88-1452 88-1579]
8/29/88	BRIEF filed by William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579. Copies: 10. Certificate of service date 8/26/88 [88-1452, 88-1579] (las) [88-1452 88-1579]
9/26/88	APPENDIX RETURNED to William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579. Reason: premature and proper index. [88-1452, 88-1579] BRIEFING SCHEDULE RESET (jws) [88-1452 88-1579]
9/26/88	BRIEF filed by Terence V. Page for Appellee Ring Screw Works in 88-1452, Terence V. Page for Appellee Ring Screw Works in 88-1579. Copies: 10. Certificate of service date 9/23/88 [88-1452, 88-1579] (jws) [88-1452 88-1579]
10/11/88	APPENDIX filed by William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579. Copies: 05, 2 Volumes. Certificate of service date 10/7/88 [88-1452, 88-1579] (jws) [88-1452 88-1579]
10/12/88	REPLY BRIEF filed by William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579 Copies: 10. Certificate of service date 10/11/88 [88-1452, 88-1579] (jws) [88-1452 88-1579]

DATE	PROCEEDINGS
1/4/89	Oral argument date set for AM 2/21/89 in court room 836. Notice of argument sent to counsel. [88-1452, 88-1579] (srw) [88-1452 88-1579]
2/21/89	CAUSE ARGUED by William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579; by Richard Tuyn for appellee Ring Screw Works before Judges Wellford, Nelson, Norris. [88-1452, 88-1579] (teb) [88-1452 88-1579]
2/21/89	APPEARANCE filed by Attorney Richard M. Tuyn for Appellee Ring Screw Works in 88-1452 [88-1452] (srt) [88-1452]
8/16/89	OPINION filed: AFFIRMED, decision for publication pursuant to local rule 24. [88-1452, 88-1579] Harry W. Wellford, Authoring Judge, David A. Nelson, Circuit Judge, Alan E. Norris, Circuit Judge. (max) [88-1452 88-1579]
8/17/89	JUDGMENT: AFFIRMED, cost taxed (appellee to recover costs). Bill of costs due 8/30/89. [88-1452, 88-1579] Bill of cost due by 8/30/89 for Terrance V. Page in 88-1452, for Richard M. Tuyn in 88-1452, for William Mazey in 88-1579, for Terrance V. Page in 88-1579 (max) [88-1452 88-1579]
8/28/89	PETITION for en banc rehearing filed by William Mazey for Appellant Arthur Groves, Appellant Local 771 in 88-1452, William Mazey for Appellant Bobby J. Evans, Appellant Local 771 in 88-1579. Certificate of service date 8/25/89. [88-1452, 88-1579] (teb) [88-1452 88-1579]
8/28/89	BILL OF COST filed by Richard M. Tuyn for Appellee Ring Screw Works in 88-1452. Richard M. Tuyn for Appellee Ring Screw Works in 88-1579. Certificate of service date 8/24/89 [88-1452, 88-1579]
9/19/89	LETTER SENT by blc to Terrance V. Page for Appellee Ring Screw Works in 88-1452, Richard M. Tuyn for Appellee Ring Screw Works in 88-1452, Terrance V. Page for Appellee Ring Screw Works in 88-1579, Richard M. Tuyn for Appellee Ring Screw Works in 88-1579 directing appellee to respond to a petition for en banc rehearing. Response is to be rec'd nlt 10/3/89 and should not exceed ten (10) pages; (20 copies) [153843-1]; previously filed by William Mazey, William Mazey in 88-1452, 88-1579. Response due by 10/3/89 for Terrance V. Page in 88-1452, for Richard M. Tuyn in 88-1579 [88-1542, 88-1579]. (blc) [88-1452 88-1579]

DATE	PROCEEDINGS
10/3/89	RESPONSE to a petition for en banc rehearing [153843-1]; previously filed by William Mazey, William Mazey in 88-1452, 88-1579. Response filed by Richard M. Tuyn for Appellee Ring Screw Works in 88-1452, Richard M. Tuyn for Appellee Ring Screw Works in 88-1579. Certificate of service date 10/2/89. [88-1452, 88-1579] (blc) [88-1452 88-1579]
10/23/89	ORDER filed denying petition for en banc rehearing [153843-1] filed by William Mazey, William Mazey [88-1452, 88-1579] in 88-1452, 88-1579 for en banc rehearing [88-1452, 88-1579]. Harry W. Wellford, Circuit Judge, David A. Nelson, Circuit Judge, Alan E. Norris, Circuit Judge. (teb) [88-1452 88-1579]
10/31/89	MANDATE ISSUED with no cost taxed [88-1452, 88-1579] (teb) [88-1452 88-1579]
10/31/89	CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [88-1452, 88-1579]. Volumes included: 1 Pl; 1 Tr; 1 Dep; (teb) [88-1452 88-1579]

DATE	PROCEEDINGS
1/30/90	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by William Mazey for Appellant Arthur Groves, Appellant Local 771. Filed in the Supreme Court on 1/22/90, Supreme Ct. case number: 89-1166. [88-1452] (teb) [88-1452]
3/26/90	U.S. Supreme Court order filed granting petition for writ of certiorari [216847-1] filed by William Mazey [88-1452]. Filed in the Supreme Court on 3/19/90. (tab) [88-1452]

AGREEMENT

Between

FERNDALE FASTENER DIVISION

RING SCREW WORKS

AND

INTERNATIONAL UNION, UNITED AUTOMOBILE,

WORKERS OF AMERICA (UAW)

LOCAL NO. 771

1985

THIS AGREEMENT, made and entered into this 5th day of January, 1985, between the FERNDALE FASTENER DIVISION of Ring Screw Works, hereinafter referred to as the Company, and the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW) Local #771, hereinafter referred to as the Union, agree as follows:

ARTICLE I

RECOGNITION

Section 1. The Company recognizes the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local #771, as the exclusive representative of its employees for the purpose of collective bargaining in respect to matters on rate of pay, wages, hours of employment, and other conditions of employment.

Section 2. The term "employees" as used in this agreement shall not include any persons working as foremen, industrial nurses, guards, salaried office and clerical employees, engineering and drafting employees, firemen, stock chasers, maintenance engineers, technical employees, and supervisors as defined in the National Labor Relations Act, as amended.

Section 3. The management of the plant and the direction of the working forces, including (but not limited to) the right to hire, suspend, or discharge; the right to adopt shop rules; the right to relieve employees from duty because of lack of work or other legitimate reasons; and to introduce new and improved methods, are vested exclusively in the Company; provided, however, that this will not be used for the purpose of discriminating against any employee because of membership in the union, subject to provisions of this agreement.

ARTICLE II

UNION SECURITY

Section 1. It shall be a continuing condition of employment with the Company, for the duration of this agreement, that employees covered by this agreement, both present and new employees, shall be members in good standing with the Union. New employees shall become members sixty (60) days after their hiring date.

Section 2. For the purpose of this article, an employee shall be considered a member of the Union in good standing if he tenders the periodic due and initiation fees required as a condition of membership.

Section 3. The company shall, from each employee other than probationary, who in writing, on a form agreed to by the Company and the Union, authorized the Company to do so, deduct union dues in such amount as shall be certified to on such form from wages payable on the second regular payday of each month. All sums deducted shall be remitted to the Union not later than the 30th day of the calendar month in which the deductions are made and shall be accompanied by a record of employees from whom deductions have been made, with the amount of such deductions.

ARTICLE III

UNION REPRESENTATION

Section 1. For the purpose of disposition of grievances, there shall be a Shop Committee consisting of four (4) members, who will be elected by employees on the seniority list of the Company. One of the four committee members shall be designated as Plant Chairman. One (1) representative of the local union may act as an ex officio member of the Shop Committee. Members of the Shop Committee shall also act as stewards.

Section 2. A regular meeting between the Shop Committee and the Company representative shall take place

during working hours on the second Wednesday of each month, the Company to pay Committeemen only for time on regular scheduled shift. The regular meeting shall normally start one-half (½) hour before the end of the day shift. Special meetings may be arranged by mutual agreement. Should the Company or the Union request a special meeting in writing, such meeting shall be held within three (3) days from such request or as soon thereafter as possible.

Section 3. A copy of the minutes of the monthly meeting between Management and the Shop Committee shall be posted on the bulletin board.

Section 4. No employee with less than twelve (12) months seniority shall be eligible for any elective office in the Union within the plant.

Section 5. The names of the Shop Committee and the Chief Steward shall be certified in writing to the Company by the Union.

ARTICLE IV

GRIEVANCE PROCEDURE

Section 1. Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:

Step 1. Between the employee, his steward and the foreman of his department. If a satisfactory settlement is not reached, then

Step 2. Between the Shop Committee, with or without the employee, and the Company management. If a satisfactory settlement is not reached, then

Step 3. The Shop Committee and/or the Company may call the local Union president and/or the International representative to arrange a meeting in an attempt to resolve the grievance. If a satisfactory settlement is not reached, then

Step 4. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only.

Section 2. Grievances alleging an unjust or discriminatory discharge must be submitted in writing to the foreman involved within two (2) working days of the discharge. The Company must render a disposition within four (4) working days of the receipt of such a grievance.

Section 3. The Company shall not consider the grievances of any individual employee unless it is presented in writing under the grievance procedure within five (5) working days of their occurrence, excepting discharges which are governed by the preceding section. The Company will render a disposition within five (5) working days of receipt of such grievance.

Section 4. Members of the Shop Committee and Chief Stewards shall be allowed the necessary time to investigate and adjust grievances promptly.

Section 5. An agreement reached between the Company and the Shop Committee under the grievance procedure shall be binding on all employees affected and cannot be changed by any individual.

ARTICLE V

SENIORITY

Section 1. All persons shall be considered on a probationary basis for a period of six (6) months from the date of hiring and may be laid off or discharged before the expiration of said period without recourse.

Section 2. The Company will prepare and post seniority list on the bulletin board. It will be brought up to date each six (6) month period.

Section 3. An employee shall lose seniority for the following reasons:

(a) An employee quits.

(b) The employee is discharged for just cause.

(c) The employee is absent for three (3) work days from work without notifying the Company, unless the employee presents a reason acceptable to the Management and the Shop Committee for not having done so.

(d) The employee fails to report for work within three (3) working days when recalled by the Company after a layoff, unless he presents a reason acceptable to the Company and Shop Committee.

(e) If the employee is laid off for a continuous period equal to the seniority he had acquired at the time of such layoff period or one year, whichever is greater.

(f) If employee on extended layoff fails to notify the Company annually of his intention of returning to employment with the Company if recalled. Such notice to be made by certified or registered mail annually within ten (10) calendar days prior to the anniversary date of layoff.

Section 4. The Shop Stewards and Shop Committee members shall head the seniority list for purposes of layoff and recall during their term of office. They shall be returned to their original standing on the seniority list upon the termination of this service.

ARTICLE VI

LAYOFF

Section 1. When it becomes necessary to reduce the work force, the Company shall apply the following program:

(a) All employees shall be given forty-eight (48) hours advance notice before the layoff becomes effective, unless the layoff is a temporary one not to exceed five (5) working days.

(b) All probationary employees in the affected department shall be laid off first. Exceptions shall be agreed upon between the Company and the Shop Committee.

(c) In the event of any further layoffs, the man who has the least seniority in the department affected shall be laid off first. Exceptions shall be agreed upon by the Company and the Shop Committee.

(d) There are two (2) departments—The Tool Room Department and the Production Department.

(e) If the Company finds it necessary to lay off more than 25% of the seniority employees in a department, the department's work week may be reduced to thirty-two (32) hours a week, which shall be the minimum work week.

(f) The Company agrees not to work more than ten (10) employees (excluding one heat treat operator per shift) and two (2) employees on the midnight shift in excess of 40 hours per week (32 hours as in section (e) above) during the time employees with more than one (1) year of seniority are laid off. Any deviation from the above is to be approved by the Shop Committee.

Section 2. When an employee is sent home for lack of work or other cause except sickness, injury, or infraction of shop rules, no junior employee shall be permitted to

work on a job where such employee was working except in cases of a reasonable emergency approved by the Shop Committee on that shift.

Section 3. Employees with greater seniority shall replace employees who have less seniority whenever any time is to be lost due to lack of work, breakdown, or any other cause where practical.

ARTICLE VII

RECALL

Section 1. Employees shall notify the Company of any change of address within five (5) days after change has been effected. They shall receive a receipt from the Company that such notice has been given. Such notice shall be sent to the Company in person. The Company shall be entitled to rely upon the address shown upon its records.

Section 2. When the seniority list in any department is exhausted, when recalling employees back to work, it is agreed that before any new employee shall be hired, employees laid off in any other department who are qualified to perform the required services shall be called into such departments to work as new employees until such time as said employee may be called back to work in their own departments by virtue of their seniority therein. Seniority shall be accumulative during layoffs. It is understood relative to this section that the employer has sole discretion in determining the qualifications of employees.

Section 3. In case of a layoff or recall, an employee who believes that his seniority rights are being violated shall notify the Shop Committee which in turn, shall notify the Company in writing. The Company will provide the committee with a receipt showing that notification was received. If his seniority rights are being violated, and if after notification the Company fails to rectify its error, the aggrieved employee shall be compensated for the loss of his time at his regulare rate from the time of such

notification until the time he is restored to work, if the grievance is upheld under the grievance procedure. See Section 1 above for notification requirements for change of address.

ARTICLE VIII

PROMOTIONS

Section 1. When the Company determines that an opening exists in the Production Department exclusive of the maintenance and inspection classifications, the employee with the greatest seniority will be given the opportunity to fill the job. In filling a new job or vacancy, a determination of practical ability and proper ability to perform services on such new job or vacancy shall be made by the Company.

Section 2. An employee promoted to a better job where training is required will be ineligible for any new vacancies for a period of two (2) years unless acceptable to the Company.

Section 3. Foremen promoted from the ranks and demoted again shall be allowed to work on the basis of their accumulated seniority rating, where a job is open or created.

Section 4. The Company reserves the right to advance employees of the Company into clerical or other positions not covered by this agreement. In the event the Company shall select any of its hourly employees for such positions, and it shall thereafter be determined by the Company that said employees are not suited for those positions, then said employees may be returned to their original occupations and their seniority shall accumulate in the mean time. After this period of one (1) year, said employee shall lose his seniority status in the bargaining unit. Trial period shall not exceed one (1) year.

ARTICLE IX

TRANSFERS

Section 1. (a) Employees shall have a choice of shifts in their classification by seniority. Choice will be limited to once a year and transfer will be made on the first scheduled Monday on or after January 1. An employee wishing to transfer must notify the Company in writing by December 15. Employees will not be allowed to downgrade unless the Company requires it. Transfers between header, roller, and press classifications will not be considered downgrades. Employees transferring between headers, rollers, and presses are not eligible to exercise a shift change under this section for a period of six (6) months following the date of transfer.

(b) The Company may hire an experienced worker to fill a job opening if there is no person on the seniority list who has the necessary qualifications to fill the job. When the job opening occurs on the day shift in a certain job classification, the employee with the most seniority on the night shift in that job classification will be given the vacancy and the new employee hired will replace him on the night shift.

(c) When a job opening occurs on the day shift and is filled by promoting one of the employees on the seniority list, then the night shift employee in that particular job classification will have the option to take the job opening on the day shift, provided he is higher on the seniority list than the person who was promoted. If he is lower on the seniority list, then the employee promoted will take the day shift opening.

(d) If job opening occurs on the night shift and is filled by promoting one of the employees on the seniority list, the employee promoted will remain on the night shift until he can exercise his seniority rights under Section 1 (a).

Section 2. The Company shall maintain separate seniority lists for the toolroom and production employees. An employee transferring from the production to the toolroom shall accumulate seniority in the toolroom from the first day he enters the toolroom. When it is necessary to reduce the working force in the toolroom, the employee who has transferred from production will be returned to his original group, in place of being laid off, with total accumulated seniority.

Section 3. An employee who transfers and who fails to make good on the job or is dissatisfied with it forfeits his right to displace any other employee who has been promoted or transferred in the meantime. He must wait until there is another vacancy. A transferred employee who is dissatisfied with his new job must notify his foreman within two (2) weeks of the starting date to that effect.

Section 4. The trial period during which it can be determined whether an employee is capable of handling a new job shall not exceed six (6) months.

Section 5. In the event an operation in any department is discontinued, employees on such operation shall be assimilated by the rest of the plant according to their seniority and ability.

Section 6. When the Company determines that an opening in the maintenance and inspection classifications and/or toolroom exists for which bargaining unit members may apply, the Company will review applicants on the basis of their respective merit, ability, and capacity among the applicants as determined by the Company is equal, then seniority will determine the successful applicant.

Section 7. The Company may hire an experienced worker for a replacement or for a new job if there is no person on the seniority list who has the necessary qualifications for the job, and the proficiency to do immediately such job without training.

Section 8. When new jobs are placed in production and cannot be placed in existing classifications by mutual agreement and whenever an existing job changes substantially after the effective date of the current agreement. Management will set up a new classification and a rate covering the job in question and will designate it as temporary. A copy of the temporary rate and classification name will be furnished to the Shop Committee. Within thirty (30) days after such a new job as defined above has been placed into production, the Company and the Union will negotiate the rate and classification. When such negotiations have been completed, they shall become part of the Local wage schedule, and the negotiated rate, if higher than the temporary rate, shall be applied, and shall be retroactive for thirty (30) days after negotiations have been completed.

ARTICLE X

ABSENCE AND LEAVES OF ABSENCE

Section 1. An employee shall notify the Company in case it is necessary for him to be absent from work. This notice is to be given on the day the employee is absent or previously. Failure to comply with this rule makes the employee subject to disciplinary action to be determined by the Company.

Section 2. Upon properly written application, leaves of absence for a specific purpose and specified period of time may be granted employees without loss of seniority. Leaves of absence of three (3) days or less are at Company discretion. Leaves of absence greater than three (3) days at the discretion of the Company and the Shop Committee. A copy of such leaves of absence is to be given to the Shop Committee. Leaves of absence are to be limited to a period of three (3) months, subject to renewal. Falsification on the application shall be sufficient cause for the discharge of the employee.

Section 3. Members of the Union elected to Union positions or selected by the Union to do work which takes them from their employment with the Company, shall at their request receive leaves of absence. Upon their return they shall be reemployed at work generally similar to that which they did last prior to the leave of absence with seniority accumulated during each leave of absence. At no time shall members of the Union, either elected or selected by the Union to do work which takes them from their employment, exceed one (1) in number, except by mutual agreement.

ARTICLE XI

HOURS OF WORK AND OVERTIME

Section 1. The regular work day shall be eight (8) hours and regular work week forty (40) hours.

Section 2. Employees shall receive time and one half for all work over eight (8) hours in any twenty-four (24) hour period, for over forty (40) hours in any one (1) week, and for work on Saturday; provided, however, that hours worked after midnight of Friday which are part of the regular Friday night shift shall be paid for at straight time rates for the first eight (8) hours of the shift.

(a) Before a holiday, the Company may schedule two (2) shifts without paying premium pay, for the purposes of equalizing hours worked by the two (2) shifts.

Section 3. Double time shall be paid for work done on Sunday and the following named holidays, regardless of how they may be scheduled in any special arrangement of holidays.

New Years Day
Memorial Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Day

On other holidays the Company may have employees perform work at time and one half and in addition, pay eight (8) hours at straight time for the holiday. This provision is made to give the Company the flexibility to meet customer demands.

Section 4. The allowance of an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis, eliminating any double overtime payment.

Section 5. Employees shall not be required to work after five (5) p.m. on December 24th and December 31st.

Section 6. The regular work week shall start at 12:01 Monday morning and end Friday 12:00 Midnight, inclusive.

Section 7. The Company shall specify a starting time and quitting time for all operations.

Section 8. All employees shall be paid on Company time on Thursday of each week. If a pay day falls on a holiday or a department is not working on that day, employees in such department shall receive his/her pay on the day before.

Section 9. When regular shifts extend into Saturday, Sunday, or legal holidays specified herein, all time beyond one (1) hour worked within such days shall be paid at overtime rates, except as provided in Section 2 immediately above.

Section 10. Overtime work shall be equally distributed in each department as nearly as possible by applying a policy of rotation together with the ability of the employees to perform the work.

ARTICLE XII

CALL-IN-PAY

Section 1. In the event that an employee reports for work at his regular shift without having had proper

notice not to report, he shall be given at least four (4) hours' work, or if no work is available, he shall be paid for four (4) hours at the occupational rate of the job for which he was scheduled to report. The Company may at its discretion, assign the employee to any work available which he is able to perform, and if the employee refuses such assignment, he shall not receive any pay. In the event of fire, storms, floods, power breakdowns, work stoppages, or other causes beyond the control of the Company which interfere with work being provided, the provisions of this section will not apply. If an employee is absent from work on the previous scheduled work day, he shall not be entitled to the benefits of this provision if proper notification has been given other employees and the Company has made a reasonable attempt to notify the absent employee.

ARTICLE XIII

WAGES

Section 1. When an employee is permanently transferred to a higher rated job group, he shall receive the rate for the job to which he is transferred after sixty (60) days. Notwithstanding the payment of the rate for the job, the trial period may continue for up to six (6) months. A qualified employee in any classification is only one who has successfully completed the trial period.

Section 2. Employees who are permanently transferred to a lower rated job shall receive one (1) week notice before the transfer is made, and upon the transfer, will take the rate of the new job. If one (1) week notice shall not be given, the permanently transferred employee shall be paid for the first week at the rate of the previous job, after which first week he shall receive the rate of the job to which he has been transferred. This section does not apply when the Company downgrades an employee for non-satisfactory job performance or if the employee requests the downgrade.

ARTICLE XIV

VACATIONS

Section 1. Employees hired June 2 to December 1st will have a December 1st vacation base date. Employees hired December 2 to June 1st will have a June 1st vacation base date. Each employee who, on June 1st or December 1st, has one (1) or more year's seniority shall be entitled to a vacation payment as follows:

Seniority	Number Hours Pay
One year but less than two years	60
Three years but less than five years	80
Five years but less than ten years	100
Ten years but less than fifteen years	120
Fifteen years but less than twenty years	140
Twenty years but less than twenty-five years	160
Twenty-five years but less than thirty years	180
Thirty years and over	190

Section 2. For determining vacation seniority all employees shall use June 1 or December 1 as base.

Section 3. Vacation pay shall be computed at the employee's regular hourly rate, and no overtime, shift premium or holiday pay time shall be included therein. Those employees with a June 1 base will have their vacation pay computed as of June 1 and will be paid by June 15. Those employees with a December 1st base will have their vacation pay computed as of December 1st and will be paid by December 15th.

Section 4. Periods of absence from work for any reasons other than compensable injury in excess of thirty (30) continuous days will be deducted and an adjusted vacation pay made for time actually worked. An employee absent from work for a continuous period of thirty (30) days or longer due to sickness, or off the job injury shall receive vacation credit for the first thirty (30) days of that absence. An employee who, for any reason including

loss of work due to a compensable injury, does not work at least ten (10) full days during the vacation year shall not receive vacation pay.

Section 5. Employees shall be eligible for vacation time off at the rate of one (1) work week for each forty (40) hours of vacation pay which will be due to them on June 1 or December 1 of that calendar year. There will be no accumulation or carry over from year to year.

Section 6. Vacations must be taken at any time before December 1st of that year, but must be arranged with the approval of the foreman of the department who will be governed by the order in which requests are made and conditions in regard to work in that department (may be taken after December 1st with Company approval).

Section 7. An employee who has one (1) year or more seniority and for any reason is leaving the employ of the Company shall receive the vacation pay he would be entitled to according to the seniority as outlined in Section 1, prorated to time actually worked.

Section 8. Subject to provisions hereafter enumerated, the Company will, beginning with the 1986 vacation year, pay a vacation attendance bonus during the vacation qualifying period of June 1 to June 1, provided:

(a) Gross pay will be the gross of the 52 weekly pay periods ending prior to June 1 of the vacation year.

(b) That the total scheduled weekday hours of work (Monday through Friday only) during the qualifying period shall be in excess of: 1,890 hours for a 2% bonus, 1,990 hours for a 3% bonus and 2,140 hours for a 4% bonus, of gross pay.

(c) Each employee will be allowed five (5) days of absence without penalty.

(d) Any vacation days in excess of the following will be considered as absences: (Seniority based on June 1 to June 1).

1 year seniority but less than 3 years—
5 consecutive work days

3 years seniority but less than 10 years—
10 consecutive work days or 2 periods of 5 consecutive work days

10 years seniority but less than 20 years—
15 consecutive work days or 10 consecutive work days and 5 consecutive work days.

20 years seniority or more—20 consecutive work days or 2 periods of 10 consecutive work days or 1 period of 10 consecutive work days and 2 periods of 5 consecutive work days.

(e) Any absence of a full work day (Monday through Friday and Saturdays, (see "h" below) where entire plant is scheduled) in excess of allowed absences shall reduce his vacation bonus $120.00 per day. This change effective June 1, 1985 and thereafter. In addition, any combination of tardiness or other straight time lost which adds to eight (8) hours shall be considered a day of absence for eight (8) hours of straight time lost. Any tardiness shall be charged a minimum of one half hour. Tardiness being any time (one minute) after starting time. Time missed prior to or after vacation periods which extend such vacation period shall reduce bonus by two (2) times normal rate.

(f) Time lost due to compensable injury will not be deducted.

(g) Vacation attendance bonus to be paid July 1 or when employees goes on vacation, whichever is later, but not later than the last working day in August.

(h) An employee who has worked less than one half (½) of the scheduled Saturdays (counting only the first three (3) scheduled each calendar month) and holidays (Article XI, Section 3) shall be charged one day for each absence below the one half (½) attendance requirement.

In order to be credited with working a scheduled Saturday, the employee must work a minimum of seven (7) hours.

(i) The employees shall have five (5) days per year (non-accumulative) plus a total of twelve (12) additional days over the life of the contract for which the Committee may make application for credit for approved union business.

(j) Computed bonuses which total less than $250.00 shall not be paid.

ARTICLE XV

INSURANCE

Section 1. The company will establish an insurance program either under a group insurance policy or policies issued by an Insurance Company or Insurance Companies. A copy of the insurance program is attached and made a part of the Agreement. The Company may at its option self insure life and S/A benefits.

Section 2. The Company agrees to pay the cost of furnishing the coverage provided for in the insurance program referred to above and shall receive and retain any divisible surplus, credits or refunds or reimbursements under whatever name made on contracts for insurance.

Section 3. The Company by payment of the premium on any insurance policy or policies issued by an insurance company or companies selected by the Company in accordance with the program, shall be relieved of any further liability with respect to the benefits of the program under such policy or policies.

Section 4. Unless otherwise specifically provided herein, the Company shall pay all expenses incurred by it in the administration of the program.

Section 5. No matter respecting the program or and difference arising thereunder shall be subject to the grievance procedure established in the collective bargaining

agreement between the Company and the Union. The Company may at its option change insurance carriers to one with comparable coverage. A change in the health insurance carrier is subject to the grievance procedure prior to any change on the basis of comparability only.

Section 6. This agreement and insurance program shall continue in effect until the termination of the collective bargaining agreement of which this is a part.

Section 7. The insurance program summarized here will provide coverage for the eligible employees as follows:

Life Insurance Benefits
(Eighteen (18) months new hires) $30,000.00
Includes accidental death and dismemberment

Hospital and Surgical Benefits (Three (3) months new hires)

Prescription Drug Plan
(Eighteen (18) months new hires) .....$3.00 deductible

Sickness and Accident Insurance (Eighteen (18) months new hires January 5, 1985 .....$205.00

Dental Plan (Eighteen (18) months new hires)
$25.00 annual deductible, $75.00 maximum family deductible on covered expenses for all full time employees.

Vision Care (Eighteen (18) months new hires)

The details of the above will be found in the contracts furnished by the Insurance Company or Insurance Companies and the rights of employees covered under the contracts will be found therein and become a part of this agreement.

Section 8. Employees who are laid off shall have the option to pay the first two premiums for basic health insurance (including vision) at the group rate. Payment must be made to the Company by the 20th day of the month in which the Company payment is due.

Section 9. All benefits cease when an employee is off work for one year.

Section 10. The employee is responsible for notifying the Company immediately when there is any change in their or their family's status with regard to all insurance policies or changes in information previously furnished to the company.

ARTICLE XVI

GENERAL

Section 1. The Company agrees to make every effort to provide proper safety and sanitary conditions and devices in the plant. The use of safety glasses and hearing protection in the plant will be mandatory and will be enforced 100 percent as a condition of employment.

Section 2. When an employee who has been disabled and not working due to compensable injury or occupational disease is able to return to work, he may be placed at work by the Company on any job in its plant regardless of such employee's seniority rating. All employees of the Company waive their seniority rights to such extent in favor of such an employee who is able to and does return to work; provided, however, that such an employee shall have such preferred seniority only for ninety (90) days after his return to work. Whenever practical, such employee shall replace a junior employee. After such ninety (90) days a review of the case shall be made by the Company and the Shop Committee to determine whether such ninety (90) days shall be extended.

Section 3. The Company will provide bulletin boards for the use of the Union to be located in central locations. All union notices must be approved and posted by the Plant Manager or someone designated by him. The Union agrees that no Union notice shall be posted in any other part of the plant.

Section 4. Any employee who has been injured during working hours and is required to leave the plant for treat-

ment or is sent home for such injury shall receive payment for the remainder of that shift at his regular rate of pay providing a Doctor or Nurse, designated by the Company, advised that such employee is unfit for further work on that shift. This provision applies only on the day of the original injury. An employee who declines light work within his capabilities forfeits pay for the balance of the shift.

Section 5. Nothing herein shall permit the Union or any of its members to assume authority to officiate in a managerial or supervisory capacity. The products to be manufactured, the location of plants, the methods of manufacturing are solely and exclusively the responsibility of the Company.

Section 6. No foreman or assistant foreman shall perform the regular work of an employee but this shall not be construed to prevent a member of the management from performing operations where an emergency arises, or for the purpose of investigation, inspection, experimentation, information, instruction, or otherwise as may be necessary in the discharge of their supervisory duties. When foreman is working on a machine for purposes of instruction or trouble shooting, the assigned operator will be present to observe as much as possible.

Section 7. The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, of production at the Company's plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth herein. Neither will the Company engage in any lockout until the same grievance procedure has been carried out.

Section 8. It is understood and agreed that in the event of any strike, work stoppage or interruption or impeding

of work on the part of the employees during the life of the agreement, there shall be no financial liability on the part of the International Union, the Local Union, or any of their officers, agents or members. The sole recourse and exclusive remedy for the employer in such event shall be to impose disciplinary measures upon employees involved.

Section 9. It is agreed that production must be maintained and failure of an employee to do so will cause him or her to be disciplined, as agreed upon by Management.

Section 10. Any employee who violates any term of this agreement shall be subject to disciplinary measures.

Section 11. Conditions covered in this contract are subject to State and Federal laws and rules and regulations imposed by any government agency.

Section 12. Economic issues shall not be a matter of negotiations within the period of this contract unless it is by mutual agreement between the Company and the Union.

Section 13. It shall be the employee's responsibility to provide the Company with current information including address, telephone number, dependents, etc., for insurance and other necessary purposes. Notification of any changes must be submitted in writing to the office and the employee will be given a dated receipt.

Section 14. The parties believe that this contract is not in any part contrary to the Provisions of any State or Federal law. In the event that it should be later found that a clause, sentence or pargraph of this agreement is in derogation of the provisions of any State or Federal Law, that portion of the contract shall give way to the provisions of the State or Federal law, and if it is necessary to revise such clause, sentence or paragraph, the parties will meet and negotiate the same, but all provisions of the contract not so in derogation shall continue

in full force and effect without change until the termination of the contract.

ARTICLE XVII

DURATION

Section 1. This agreement shall become effective on the 5th day of January, 1985, aud remain effective until January 5, 1988, and from year to year thereafter unless written notice is given by either party to the other of its desire to terminate or modify the agreement at least sixty (60) days before the termination date or anniversary date thereof.

International Union	FERNDALE FASTENER DIVISION
United Automobile, Aerospace & Agricultural Implement Workers of America, Local Union No. 771	
	HAROLD CHAPPELL, JR. President Ring Screw Works
ROBERT HEIDE Pres., Local 771, UAW	
ART STIEBER Int'l. Rep., Region 1B, UAW	MICHAEL C. KURKO General Manager
APPROVED BY:	
	SHOP COMMITTEE
BOB LENT Director, Region 1B, UAW	
	RON BOWERS, Chairman
	BRYAN L. ANIOL
	NEIL BOWERS
	FRED SABER

APPENDIX A

WAGES

Base rates as of January 5, 1985, excluding $.05 cost of living float.

	Top Rate	Afternoon and Midnight Shift Premium	Range
Header Set-Up	13.92	.55	1.15
Press Set-Up	13.92	.55	1.15
Roller Set-Up	14.10	.55	1.15
Floor Inspector	13.92	.55	1.15
Chief Inspector	14.37	.56	1.15
General Factory Worker	12.62	.50	1.95
Laborer	10.77	.40	1.95
Shipping Clerk	13.66	.54	1.15
Salvage Operator	12.10	.40	1.20
Heat Treat Operator	13.71	.54	1.20
Maintenance	14.39	.56	1.20
Toolmaker	15.13	.59	.75
Toolroom Machine Hand	14.78	.58	1.35
Toolroom Learner	12.68	.50	

For the second and third year of the contract, a payment will be paid on January 15, 1986 and 1987. The payment will be computed at 2% of employee's wages only for hours worked during the previous calendar year.

Notes:

(a) Header, Press, Roller, Set-Up, Shipping Clerk, Heat Treat:	New person starts at low rate and will receive 15¢ every three (3) months. Last 25¢ on merit only.
(b) General Factory, Laborer, and Salvage Operator:	New person starts at low rate and will receive 15¢ each two (2) months.
(c) Toolroom Learner:	To start at rate shown and will receive 10¢ every three (3) months until low toolroom machine hand rate is reached.

(d) Leaders may be appointed in any classification—rate shall be 45¢ over top rate of that classification.

APPENDIX B

HOLIDAYS

The employees (new employees after sixty (60) days will be paid for the following holidays subject to the provisions below:

1985	1986	1987
Memorial Day	Memorial Day	Memorial Day
July 4th	July 4th	July 3rd
July 5th	Labor Day	Labor Day
Labor Day	Thanksgiving	Thanksgiving
Thanksgiving	Day After Thanksgiving	Day After Thanksgiving
Day After Thanksgiving	Dec. 24	Dec. 24
Dec. 23	Dec. 25	Dec. 25
Dec. 24	Dec. 26	Dec. 28
Dec. 25	Dec. 29	Dec. 29
Dec. 26	Dec. 30	Dec. 30
Dec. 27	Dec. 31	Dec. 31
Dec. 30	Jan. 1, 1987	Jan. 1, 1988
Jan. 31	Jan. 2, 1987	
Jan. 1, 1986		

Holiday pay to be eight (8) hours straight time, no overtime or night premium except as follows: Night shift premium will be added to holiday pay for all holidays except those holidays associated with Christmas-New Year holiday period.

1. No employee on leave of absence shall receive holiday pay if a holiday shall fall during his leave of absence.

2. Holiday pay for a seniority employee will be reduced if he does not work all scheduled hours of his shift

on the last work day prior to the holiday and the first work day after the holiday. He will be paid according to the actual number of hours he works (to the nearest quarter hour) compared to the total number of scheduled hours in the last work day before the holiday and the first work day after the holiday. For example, if nine (9) hours are scheduled on the last work day before the holiday and the first work after the holiday, the total number of scheduled hours is 18. If the employee works 12 of the 18 hours, he would receive only 12/18 or 2/3 of the holiday pay to which he would otherwise be entitled.

3. For Christmas-New Year periods only, occurring during this agreement, holiday pay eligibility for employees who work the shift hours on the last scheduled work day before and the first scheduled work day after the holiday period will be determined in accordance with section 2, above. For employees who are absent during the scheduled shifts on either the last scheduled work day before or the first scheduled work day after the holiday period, eligibility for holiday pay will be determined by applying the percentage of time worked during the four (4) day period inclusive of the last three (3) work days before the holiday and the first scheduled work day after the holiday. The amount of holiday pay will be determined on the basis of the percentage of hours worked during this four (4) day period compared to the number of scheduled hours during the period. However, if an employee is absent on both the last scheduled work day before and the first scheduled work day after the holiday period, he will be ineligible for any holiday pay.

APPENDIX C

BEREAVEMENT PAY AND JURY DUTY

Bereavement Pay

In the event of death in the immediate family of an employee (new employees after one year) said employee,

upon proper application in writing and presentation of proof of death, shall be compensated for any scheduled (or polled) working time lost based on eight (8) hour days at straight time, Monday through Saturday (in order to qualify for Saturday pay, the employee must have worked 3 of the last 6 scheduled Saturdays). When heat treat operators are scheduled seven (7) days, they shall be eligible to receive bereavement benefits for a scheduled Sunday. This benefit is intended to compensate an employee only for scheduled working time necessarily lost by the death to the extent of and limited by three (3) scheduled working days on an eight (8) hour straight time basis. Immediate family shall mean spouse, child, mother, father, brother and sister, and spouse's child, mother, father, brother, sister, and employee's natural grandchildren. This benefit to begin at the time of death and end on the day services are held and is not intended to compensate for time the employee may request after the service for travel or other reasons.

Jury Duty

The Company shall pay an employee (new employees after one year) who necessarily loses time from his job because he has been summoned to Jury Duty as certified by the Clerk of the Court, — the difference between his scheduled straight time average earnings for eight (8) hours per day and the daily fee. Maximum of forty (40) hours per week. No payment to be made if employee volunteers for jury duty. Jury duty pay not to exceed 45 calendar days.

In order to be eligible to receive any credit for time missed, an employee who is dismissed prior to 12:30 p.m. or is scheduled for only a part day shall report to work for the balance of the shift. Afternoon shift employees shall work the number of hours beginning at his regular starting time, that a day shift employee would have been able to work.

APPENDIX D

COST-OF-LIVING ALLOWANCE AND ANNUAL IMPROVEMENT FACTOR

COST-OF-LIVING ALLOWANCE

Effective at the beginning of the first pay period commencing on or after April 5, 1985, and thereafter during the period of this Agreement, each employee covered by the Agreement shall receive a cost-of-living allowance set forth.

The cost-of-living shall not be added to the base rate for any classification, but only to each employee's straight time earnings. The cost-of-living allowance shall be taken into account in computing overtme premium, night-shift premium, vacation payments, holiday payments, and call-in pay.

BASIS FOR ALLOWANCE

The cost-of-living allowance will be determined and redetermined as provided below in accordance with changes in the official revised Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. All Cities Average) published by the Bureau of Labor Statistics, U.S. Department of Labor (1967 = 100) and hereinafter referred to as the BLS Consumer Price Index.

Continuance of the cost-of-living allowance shall be contingent upon the availability of the BLS Consumer Price Index in its present form and calculated on the same basis as the BLS Consumer Price Index for November 1984.

During the life of this Agreement, any adjustment in the cost-of-living allowance that is in excess of five cents (5¢) per hour shall be made at the following times:

Effective Date of Adjustment	Based Upon Three-Month Average of the BLS Consumer Price Index For:
First pay period commencing on or after April 5, 1985 and at three-month intervals thereafter to October 5, 1987.	December 1984, January and February 1985 and at three-month intervals thereafter to June, July, and August, 1987.

In determining the three-month average of the Indexes for a specified period, the computed average shall be rounded to the nearest 0.1 Index point.

The amount of the cost-of-living allowance shall be five cents (5¢) per hour effective with the effective date of this Agreement. Effective April 5, 1985, and for any period thereafter, as provided above, the cost-of-living allowance shall be a 1-cent adjustment for each 0.3 change in the Average Index for the appropriate three months indicated above with the three month average of September, October, and November 1984 as a base. In addition all rates of pay GFW and below shall receive 1/2 COLA adjustments until such time as the GFW rate equals 80% of the Header Setup rate.

ADJUSTMENT PROCEDURE

In the event the Bureau of Labor Statistics does not issue the appropriate Consumer Price Index on or before the beginning of one of the pay periods referred to, any adjustments in the cost-of-living allowance required by such appropriate Indexes shall be effective at the beginning of the first pay period after receipt of the Indexes.

No adjustments, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the BLS Consumer Price Index for any month or months specified above.

The parties to the Agreement agree that the continuance of the cost-of-living allowance is dependent upon the availability of the monthly BLS Consumer Price Index in its present form ad calculated on the same basis as the Index for December 1984, unless otherwise agreed upon by the parties. If the Bureau of Labor Statistics changes the form or the basis of calculating the BLS Consumer Price Index, the parties agree to request the Bureau to make available for the life of this Agreement, a monthly Consumer Price Index in its present form and calculated on the same basis as the Index for December 1984.

APPENDIX E

PENSION PLAN

Subject to the approval of the Board of Directors and Stockholders, the Company will revise the pension plan established in 1955, hereinafter referred to as the "Plan", as follows:

(1) An insurance company shall be designated by the Company, and a contract executed between the Company and such insurance company, under the terms of which, a pension fund shall be established to receive and hold contributions payable by the Company, interest, and other income, and to pay the pensions provided by the Plan.

(2) The Company by payment of the contributions or amounts provided in the above mentioned insurnace company contract shall be relieved of any further liability, and pensions shall be payable only from the insured fund.

(3) In the event of termination of the Plan, there shall be no liability or obligation on the part of the Company to make any further contributions to the pension fund. No liability for the payment of pension benefits under the Plan shall be imposed upon the Company, the officers, directors, or stockholders of the Company.

(4) The Company reserves the right to amend, modify, suspend or terminate the Plan by action of its Board of

Directors provided, however, that no such action shall alter the plan or its operation, except as may be required by the Internal Revenue Service for the purpose of meeting conditions for qualification and tax deductions under Sections 401, 404, and 501(a) of the Internal Revenue Code, in respect of employees who are represented under a collective bargaining agreement in contravention of the provisions of any such agreement pertaining to pension benefits as long as any such agreement is in effect.

(5) Principal provisions of the pension plan are shown below, but the individual booklets which will be furnished each participant contain full information and will be based on the contract entered into with the insurance company.

EFFECTIVE DATE

January 5, 1985

ELIGIBILITY

All employees who will have competed ten (10) or more years of continuous credited service at retirement.

NORMAL RETIREMENT DATE

The normal retirement date of all employees will be age 65. All employees will be retired on the first day of the month following their 70th birthday.

EARLY RETIREMENT

If you have completed at least ten (10) years of credited service, you may retire between age 60 and 65. You may elect to receive:

(a) A pension at age 65 based on your credited service up to your early retirement date;

(b) A pension beginning at your early retirement date based on your credited service up to that

date but reduced in accordance with the early retirement table as detailed in the master pension contract.

Continuous health insurance and prescription drug coverage for employees who elect early retirement with (15) years of service at age 62 or with twenty-five years of service at age 60: For the life of the retiree only. In order to receive payment, retiree may not be employed full time nor earn more than $6,000.00 per year if self-employed or working part time.

RETIREE MEDICAL COVERAGE

Retirees will be reimbursed for maximum $15.50 monthly cost of Medicare from the pension fund. Future retirees will be covered by health insurance carrier with same health coverage as active employees. Benefits will be coordinated with Medicare and all benefits will cease upon death of retired employee.)

RETIREMENT INCOME

Pensions will be in the amounts set forth below per month for each year of credited service at retirement with a maximum of thirty-seven (37) years. An employee retiring with less than ten (10) years of credited service is not eligible for benefits:

	Future Per Month	Present Per Month
10 years but less than 15	14.00	10.20
15 years but less than 20	15.00	10.40
20 years but less than 25	16.00	10.60
25 years but less than 30	17.00	10.80
30 years and over	18.00	11.00

VESTED PENSION RIGHTS

Minimum continuous credited service—10 years. Survivorship option available as selected.

DISABILITY INCOME

Employees with at least fifteen (15) years of service who are between the ages of 40 and 65 will be eligible for a pension of $15.00 per month for each year of service in the event of total and permanent disability. At age 65, the employee will receive the regular retirement income based on service at disability date. The maximum payment shall be 25 years of service less workmen's compensation benefits or any other disability payments as provided in the master pension contract, exclusive of Social Security disability payments. Subject to Internal Revenue Service approval.

CONTINUED LIFE INSURANCE

Continued life insurance shall be provided for employees who are retired under the pension plan in the amount of $5,000.00.

No matter respecting the plan or any differences arising hereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Company and the Union.

FERNDALE FASTENER DIVISION
SAFETY RULES

1. Take the time to do any job the safe way.
2. Use the proper tool for the job.
3. Exercise caution in the operation of the Hi-Lo.
4. Do not drive Hi-Lo onto any truck without first checking to see that wheels are blocked.
5. Do not repair a machine unless the power is off and locked out.
6. Do not engage in "horse play" of any kind.
7. Always keep the guards in place on all machinery.
8. Keep hands and fingers clear of moving machinery.
9. Wear safety glasses and ear protection in shop area.
10. Do not point an air hose toward another person.
11. Do not attempt electrical repairs unless you are qualified.
12. Do not leave oil, parts or refuse lying on the floor in your work area.
13. Use proper lifting methods to prevent back injury.
14. Use ladders in a safe manner and return them to the proper location.
15. Know where the fire extinguisher is located for your area.

1985 AGREEMENT BETWEEN RING SCREW DIVISION OF RING SCREW WORKS AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRUCULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL NO. 771

* * * *

THIS AGREEMENT, made and entered into this 5th day of January, 1985, between the RING SCREW DIVISION of RING SCREW WORKS, hereinafter referred to as the Company, and the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW) Local No. 771, hereinafter referred to as the Union, agree as follows:

ARTICLE I

RECOGNITION

Section 1. The Company recognizes the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, Local No. 771, as the exclusive representative of its employees for the purpose of collective bargaining in respect to matters on rates of pay, wages, hours of employment, and other conditions of employment.

Section 2. The term "employees" as used in this agreement shall not include any persons working as foremen, industrial nurses, guards, salaried office and clerical employees, engineering and drafting employees, firemen, stock chasers, maintenance engineers, technical employees, and supervisors as defined in the National Labor Relations Act, as amended.

Section 3. The management of the plant and the direction of the working forces, including (but not limited to) the right to hire, suspend, or discharge for just cause, the right to adopt shop rules, the right to relieve employees from duty because of lack of work or other

legitimate reasons, and to introduce new and improved methods, are vested exclusively in the Company; provided, however, that this will not be used for the purpose of discriminating against any employee because of membership in the Union, subject to provisions of this agreement.

ARTICLE II

UNION SECURITY

Section 1. It shall be a continuing condition of employment with the Company, for the duration of this agreement, that employees covered by this agreement, both present and new employees, shall be members in good standing with the Union. New employees shall become members sixty (60) days after their hiring date.

Section 2. For the purpose of this article, an employee shall be considered a member of the Union in good standing if he tenders the periodic dues and initiation fees required as a condition of membership.

Section 3. The Company shall, from each employee starting sixty (60) days after their hiring date, who, in writing, on form agreed to by the Company and the Union, authorized the Company to do so, deduct union dues in such amount as shall be certified to on such form from wages payable on the first regular pay-day of each month. All sums deducted shall be remitted to the Union not later than the 30th day of the calendar month in which the deductions are made and shall be accompanied by a record of employees from whom deductions have been made, with the amount of such deductions.

ARTICLE III

UNION REPRESENTATION

Section 1. For the purpose of collective bargaining and for the disposition of grievances, there shall be a Shop Committee consisting of six (6) members maximum

who will be elected by employees on the seniority list of the Company and one representative of the Local Union who may act as an ex officio member of the Shop Committee. Members of the Shop Committee shall also act as stewards.

Section 2. Meetings between the Shop Committee and the Company Representatives shall take place during working hours, the Company to pay Committeemen only for time on regular scheduled shift. Should the Company or the Union request a special meeting in writing, such meeting shall be held within three (3) days from such request or as soon thereafter as possible.

Section 3. A copy of the minutes of meetings between Management and the Shop Committee shall be posted on the bulletin board. Minutes to be prepared by the Shop Committee Secretary and shall be approved for posting by the Company Representative.

Section 4. No employee with less than twelve (12) months seniority shall be eligible for any elective office in the Union within the plant.

Section 5. The names of the Shop Committee and the Plant Chairman shall be certified in writing to the Company by the Union.

ARTICLE IV

GRIEVANCE PROCEDURE

Section 1. Should a difference arise between the Company and the Union, or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:

Step 1. Between the employee, his steward, and the foreman of his department. If a satisfactory settlement is not reached, then

Step 2. Between the employee, his steward(s) and the Manufacturing Manager or his alternate. If a satisfactory settlement is not reached, the grievance shall be reduced to written form and then

Step 3. Between the Shop Committee, with or without the employee, and the Company Management. If a satisfactory settlement is not reached, then

Step 4. Between the Shop Committee, Local Union &/or International Representative, and the Plant Manager. If a satisfactory settlement is not reached, then

Step 5. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only.)

Requests for arbitration must be made within thirty (30) days after the decision of the Company has been given to the Union at the fifth step of the Grievance Procedure. A request will be made in writing to the American Arbitration Association which will submit a list of qualified arbitrators for the parties' selection. The arbitrator shall then be selected according to the rules of the American Arbitration Association.

It is understood and agreed that the arbitrator shall have no authority except to determine disputes involving discharges. The arbitrator shall construe this Agreement in a matter which does not interfere with the exercise of the employer's rights and responsibilities except where they have been expressly and clearly limited by the terms of this Agreement. The arbitrator shall have no power or authority to add to, subtract from, or modify any of the terms of this Agreement and shall not substitute his judgment for that of the

employer's where the employer is given discretion by the terms of this Agreement. The arbitrator shall not render any decision which would require or permit an action in violation of either State or Federal law. The arbitrator shall have no power to rule upon any case which might otherwise be the subject of a charge of an unfair labor practice or a State or Federal civil rights claim.

The arbitrator's decision shall set forth his findings and conclusions with respect to the issues submitted to arbitration. The arbitrator's decision shall be final and binding upon the employer, the Union, and the employee or employees involved.

Either party shall have the right to secure, serve, and enforce subpoenas for such witnesses as are necessary to the full presentation of its case. The arbitrator's fees and expenses shall be borne equally between the parties. The expenses and compensation for attendance of any employee, witness or participant in the arbitration hearing, shall be paid by the party calling such employee, witness, or requesting such participation.

Section 2.

(a) Grievances alleging an unjust or discriminatory discharge must be submitted in writing to the foreman involved within two (2) working days of the discharge. The Company must render a final decision through the grievance procedure within four (4) working days of the receipt of such grievance.

(b) Any employee who, as a result of such grievance is reinstated, shall be paid by the Company for the time which he would otherwise have worked for the Company and shall be returned to his regular job at his previous rate.

Section 3. The Company shall not consider the grievances of any individual employee unless it is presented in writing under the grievance procedure within five (5) working days of their occurrence, excepting discharges which are governed by the preceding section. The Company must render a final decision through the grievance procedure within three (3) working days of the receipt of such grievance.

Section 4. Unresolved grievance (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7.

Section 5. Members of the Shop Committee and Plant Chairman shall be allowed the necessary time to investigate and adjust grievances promptly.

Section 6. An agreement reached between the Company and the Shop Committee under the grievance procedure shall be binding on all employees affected and cannot be changed by any indivdual.

ARTICLE V

SENIORITY

Section 1. All persons shall be considered on a probationary basis for a period of six (6) months from the date of hiring and may be laid off or discharged before the expiration of said period without recourse.

Section 2. The Company will prepare and post the seniority list on the bulletin board. It will be brought up to date each six-month period.

Section 3. An Employee shall lose seniority for the following reasons:

(a) An Employee quits.

(b) The Employee is discharged for just cause.

(c) The Employee is absent for three (3) work days from work without notifying the Company unless

the employee presents a reason acceptable to the Management and the Shop Committee for not having done so.

(d) The Employee fails to report for work within three (3) working days (five (5) working days when an employee verifies full time employment (minimum of 32 hours per week) at the time of recall) when recalled by the Company after a layoff unless he presents a reason acceptable to the Company and the Shop Committee.

(e) If the Employee is laid off for a continuous period equal to the seniority he had acquired at the time of such layoff period.

(f) If the Employee on extended layoff fails to notify the Company annually of his intention of returning to employment with the Company if recalled. Such notice to be made by certified or registered mail annually within ten (10) working days prior to the anniversary date of layoff. Notice may also be given in person during regular business hours and in such case the employee shall receive a receipt for delivery of notice.

Section 4. An Employee who believes that his seniority rights are being violated shall notify the Shop Committee which, in turn, shall notify the Manufacturing Manager in writing. The Manufacturing Manager will provide the Committee with a receipt showing that he received the notification. If his seniority rights are being violated, and if after notification, the Company fails to rectify its error, the aggrieved employee shall be compensated for the loss of his time at his regular rate from the time of such notification until the time he is restored to work.

Section 5. Shop Committee members shall head the seniority list for purposes of lay off and recall during their term of office and shall be returned to their original standing on the seniority list on the termination of this service.

ARTICLE VI

LAYOFF

Section 1. When it becomes necessary to reduce the work force, the Company shall apply the following program:

(a) All employees shall be given forty-eight (48) hours notice before layoff becomes effective, unless layoff is for less than one week.

(b) All probationary employees shall be laid off first within department.

(c) In the event of any further layoffs, the man who has the least seniority in his department shall be laid off first. Any deviation subject to agreement by the Company and the Shop Committee.

(d) There are two (2) departments—the Tool Department and the Production Department.

(e) The Company agrees not to operate more than five (5) people per shift, excluding heat treat, in excess of forty (40) hours per week during the time employees with more than one year seniority are laid off. The foregoing overtime shall not include more than two (2) Saturdays in a row. Any temporary deviation from the above to be approved by the Shop Committee.

Section 2. When an employee is sent home for lack of work or other causes except sickness, injury or infraction of shop rules, no junior employee shall be permitted to work on a job where such employee was working except in cases of a reasonable emergency approved by the Shop Committee on that shift.

Section 3. Employees with greater seniority shall replace employees who have less seniority whenever any time is to be lost due to lack of work, breakdown, or other

causes, exceptions to be approved by the Shop Committee.

ARTICLE VII

RECALL

Section 1. Employees shall notify the Company of any change of address within five (5) days after such change has been effected. They shall receive a receipt from the Company that such notice has been given. Such notice shall be sent to the Company by United States registered mail or delivered to the Company in person. The Company shall be entitled to rely upon the address shown upon its records.

Section 2. When the seniority list in any department is exhausted, when recalling employees back to work, it is agreed that before any new employee shall be hired, employees laid off in any other department who are qualified to perform the required services shall be called in to such departments to work as new employees until such time as said employees may be called back to work in their own departments by virtue of their seniority therein. Seniority shall be accumulative during layoffs.

ARTICLE VIII

PROMOTIONS

Section 1. It shall be the policy of the Company to advance employees to better jobs by seniority. In filling a new job or vacancy, a determination of practical ability and proper ability to perform services on such new job or vacancy shall be made by the Company and approved by the Shop Committee. Job openings shall be posted until the end of the second business day. Postings shall expire four (4) weeks after posting is removed from the bulletin board. Jobs need not be filled during the four (4) week period, only assignments to jobs must be completed. Employees who are upgraded

to a new classification shall be ineligible for any new vacancies for a period of three (3) years where training is required or for eight (8) months if no training is required except by mutual agreement of the Management and the Shop Committee.

Section 2. When the Company determines that an opening in the inspection supervisor classification exists for which bargaining unit members may apply, the Company will review applicants on the basis of their respective merit, ability, and capacity to do the required work. Where merit, ability, and capacity among the applicants as determined by the Company is equal, then seniority will determine the successful applicant.

Section 3. Foremen promoted from the ranks and demoted again shall be allowed to work on the basis of their seniority. Foremen shall accumulate seniority effective January 5, 1980.

Section 4. The Company reserves the right to advance employees of the Company into clerical or other positions not covered by this agreement. In the event the Company shall select any of its hourly rated employees for such position, and it shall thereafter be determined by the Company that said employees are not suited for those positions, then said employees shall be returned to their original occupations and their seniority shall accumulate in the meantime.

ARTICLE IX

TRANSFERS

Section 1. When vacancies occur on the day shift on a job classification, the employee with the most seniority on the night shift in that job classification will be given the vacancy, at his option, and the new employee hired will replace him on the night shift. This applies only when an experienced man is hired from the outside.

Section 2. The Company shall maintain separate seniority lists for the toolroom and production employees. An employee transferring from the production to the toolroom shall accumulate seniority in the toolroom from the first day he enters the toolroom. When it is necessary to reduce the working force in the toolroom, the employee who has transferred from production will be returned to his original group in place of being laid off with total accumulated seniority.

Section 3. An employee who is transferred to another classification by reason of his exercise of his seniority rights shall assume the rate of pay for the classification to which he is transferred.

Section 4. An employee who transfers to any job, and who fails to make good on that job or is dissatisfied with it, forfeits his right to displace any other employee who has been promoted in the meantime. He will assume the classification of General Factory Worker and must wait until another vacancy is posted for which he is eligible. A transferred employee who is dissatisfied with his new job must notify his foreman within thirty (30) days of the starting date to that effect.

Section 5. The trial period during which it can be determined whether an employee is capable of handling a new job shall not exceed six (6) months.

Section 6. In the event an operation in any department is discontinued, employees on such operation shall be assimilated by the rest of the department according to their seniority and ability.

Section 7. The Company may hire an experienced worker for a replacement or for a new job if there is no person on the seniority list who has the necessary qualifications of the job and proficiency to do immediately such job without training — no posting. The Company shall notify the Shop Committee two (2) days prior

to the starting date when a new employee is to be hired under this section.

Section 8. When new jobs are placed in production and can not be properly placed in existing classifications by mutual agreement and whenever an existing job changes substantially after the effective date of the current agreement, Management will set up a new classification and rate covering the job in question and will designate it as temporary. A copy of the temporary rate and classification name will be furnished to the Shop Committee. Within thirty (30) days after such a new job as defined above has been placed into production, the Company and the Union will negotiate the rate and classification. When such negotiations have been completed, they shall become part of the Local Wage schedule and the negoiated rate, if higher than the temporary rate, shall be applied retroactive.

Section 9. Employees shall not be allowed to down grade (that is accept a job of lower rate of pay) below 1/2 SS Boltmaker rate except under provisions of Article VI within three (3) years from the time they upgraded. Exceptions may be made only if acceptable to both the Company and the Shop Committee.

Section 10. When the Company determines that an opening in the toolroom exists for which bargaining unit members may apply, the Company will review applicants on the basis of their respective merit, ability, and capacity to do the required work. Where merit, ability, and capacity among the applicants as determined by the Company is equal, then seniority will determine the successful applicant.

ARTICLE X

LEAVES OF ABSENCE

Section 1. Upon properly written application, written leaves of absence for a specific purpose and specified

period of time may be granted employees without loss of seniority at the discretion of the Company and the Shop Committee, a copy of such leaves of absence to be given to the Shop Committee. Leaves of absence are to be limited to a period of three (3) months, subject to renewal. Falsification on the application shall be sufficient cause for discharge of the employee. A notice of such leaves of absence shall be posted on the bulletin board for forty-eight (48) hours after being granted.

Section 2. Members of the Union elected to Union positions or selected by the Union to do work which takes them from their employment with the Company, shall at their request receive leaves of absence. Upon their return, they shall be reemployed at work generally similar to that which they did last prior to the leave of absence with seniority accumulated during each leave of absence. At no time shall members of the Union, either elected or selected by the Union to do work which takes them from their employment, exceed one (1) in number, plus one additional member for up to thirty (30) days.

ARTICLE XI

HOURS OF WORK AND OVERTIME

Section 1. The regular work day shall be eight (8) hours and regular work week forty (40) hours.

Section 2. Employees shall receive time and a half for all work over eight (8) hours in any one day, for over forty (40) hours in any one week, and for work on Saturday; provided, however, that hours worked after midnight of Friday which are part of the regular Friday night shift shall be paid for at straight time rates for the first eight (8) hours of the shift.

Section 3. Employees shall receive double time for Sunday. They shall also receive double time in addition to their holiday pay for all work done on the following days: New Years Day, Memorial Day, Fourth of July,

Labor Day, Thanksgiving Day, Christmas, and for any hours in excess of four hours on each shift on December 24 and December 31. Employees shall receive time and a half for other holidays which the Company may schedule to provide the flexibility to meet customer demands.

Section 4. The allowance for an overtime premium on any hour excludes that hour from consideration for overtime payment on any other basis, thus eliminating any double overtime payment.

Section 5. Employees shall not be required to work after five (5) p.m. on December 24 and December 31.

Section 6. The regular work week shall start at 12:01 Monday morning and end Friday 12:00 midnight inclusive.

Section 7. The Company shall specify a starting and quitting time for all operations. The Company shall post notice of permanent changes in starting and quitting times three (3) days prior to the effective date.

Section 8. All employees shall be paid on Company time on Thursday of each week. If a payday falls on a holiday or a department is not working on that day, employees in such department shall receive his/her pay on the day before.

Section 9. When regular shifts extend into Saturday, Sunday, or legal holidays specified herein, all time beyond one (1) hour worked within such days shall be paid at overtime rates, except as provided in Section 2 immediately above.

Section 10. Overtime work shall be equitably distributed in each department as nearly as possible by applying a policy of rotation together with the ability of the employees to perform the work.

ARTICLE XII

CALL-IN PAY

Section 1. In the event that an employee reports for work at his regular shift without having had proper notice not to report, he shall be given at least four (4) hours work, or if no work is available, he shall be paid for four (4) hours at the occupational rate of the job for which he was scheduled to report. The Company may at its discretion assign the employee to any work available which he is able to perform, and if the employee refuses such assignment, he shall not receive any pay. In the event of fire, storms, floods, power breakdowns, work stoppages, or other causes beyond the control of the Company which interfere with work being provided, the provisions of this section will not apply.

If an employee is absent from work on the previous scheduled work day, he shall not be entitled to the benefit of the provision if proper notification has been given other employees.

ARTICLE XIII

WAGES

Section 1. When a general factory worker is permanently transferred to a higher rated job he shall receive the minimum rate for the job to which he is transferred. He shall receive fiften cents (15¢) per hour increase each three (3) months, not to exceed twenty-five (25¢) below top for the job.

Section 2. Employees who are permanently transferred to a lower rated job shall receive one (1) week notice before the transfer is made, and upon the transfer will take the rate of the new job. If one (1) week notice shall not be given, the permanently transferred employee shall be paid for the first week at the rate of his

previous job, after which first week he shall receive the rate of the job to which he has been transferred. This section does not apply when the Company downgrades an employee for non-satisfactory job performance or the employee requests the downgrade.

Section 3. The employees (after (60) days for new employees) will be paid for the following holidays:

1985—Memorial Day, Fourth of July, July 5th, Labor Day, Thanksgiving Day, Day after Thanksgiving, December 23, December 24, December 25, December 26, December 27, December 30, December 31; *1986*—January 1.

1986—Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, December 24, December 25, December 26, December 29, December 30, December 31; *1987*—January 1, January 2.

1987—Memorial Day, July 3rd, Labor Day, Thanksgiving Day, Day after Thanksgiving, December 24, December 25, December 28, December 29, December 30, December 31; *1988*—January 1.

Provided that all pay for holidays is based on the average number of straight time hours worked on the full work day preceding and full work day following the holiday. The average is the number of straight time hours for which the Company will give holiday pay, multiplied by the employee's straight time rate with no overtime or shift premium included therein; it equals the amount of the employee's compensation for the holiday.

Night shift premiums will be added to holiday pay for all holidays except those holidays falling within the entire Christmas-New Year period.

Furthermore, in the instance of the four (4) or more holidays falling on consecutive days we will use the four (4) scheduled work days prior to the holidays and the

first scheduled work day after the holidays and pay for each day of the holiday the average number of straight time hours worked in the aforementioned five (5) days. (This paragraph only effective when an employee missed the day before or day after.)

However, the amount of holiday pay is not to exceed eight (8) hours for the full holiday.

ARTICLE XIV

VACATIONS

Section 1. Each employee who on June 1 has one or more years seniority shall be entitled to a vacation payment as follows:

SENIORITY	*NUMBER OF HOURS PAY*
One Year *	20 hours
One year but less than three	60 hours
Three years but less than five	80 hours
Five years but less than ten	100 hours
Ten years but less than fifteen	120 hours
Fifteen years but less than twenty	140 hours
Twenty years but less than twenty-five	160 hours
Twenty-five years but less than thirty	180 hours
Thirty years and over	190 hours

* Employees who are hired between June 1 and November 1 shall receive twenty (20) hours pay on their first anniversary date.

Section 2. For determining vacation seniority all employees shall use June 1 as a base.

Section 3. Vacation pay shall be computed at the employees regular hourly rate, and no overtime, shift premium, or holiday time shall be included therein.

Section 4. Periods of absence from work for any reasons other than compensable injury in excess of thirty (30) continuous days will be deducted and an adjusted vacation pay made for time actually worked. An employee absent from work for a continuous period of thirty (30) days or longer due to sickness or off-the-job injury shall receive vacation credit for the first thirty (30) days of that absence. An employee who does not work, at least ten (10) full days during the vacation year for any reason including loss of work due to a compensable injury shall not receive any vacation pay.

Section 5. Vacation will be taken at any time before December 1 of that year (may be taken after December 1 with Company approval), but must be arranged with the approval of the foreman of the department who will be governed by the order in which requests are made and conditions in regard to work in that department. The employee shall receive his vacation pay at the time he leaves on his vacation or June 1 whichever is later, but not later than the last working day of August.

Section 6. An employee who has one (1) year or more seniority and for any reason is leaving the employ of the Company, shall receive the vacation pay he would be entitled to according to the seniority as outlined in Section 1, prorated to time actually worked.

ARTICLE XV

INSURANCE

Section 1. The Company will establish an insurance program either under a group insurance policy or policies issued by an Insurance Company or Insurance Companies. A copy of the insurance agreement is attached and made a part of the agreement. The Company may at its option self-insure Life and S/A Benefits.

Section 2. The Company agrees to pay the cost of furnishing the coverage provided for in the insurance programs referred to above and shall receive and retain any divisible surplus, credits or refunds or reimbursements under whatever name made on contracts for insurance.

Section 3. The Company by payment of the premiums of any insurance policy or polices issued by an insurance company or companies selected by the Company in accordance with the program, shall be relieved of any further liability with respect to the benefits of the program under such policy or policies.

Section 4. Unless otherwise specifically provided herein, the Company shall pay all expenses incurred by it in the administration of the program.

Section 5. No matter respecting the program or any difference arising thereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Company and the Union. The Company may at its option change insurance carriers to one with comparable coverage. A change in the health insurance carrier is subject to the grievance procedure prior to any change on the basis of comparability only.

Section 6. This agreement and insurance program shall continue in effect until the termination of the collective bargaining agreement of which this is a part.

Section 7. The insurance program summarized here will provide coverage for the eligible employees as follows:

Life Insurance Benefits—Eighteen (18) months new hires $30,000.00
Accidental Death and Dismemberment

Sickness and Accident Insurance—Eighteen (18) months new hires January 5, 1985 ..... $205.00

Hospital and Surgical Benefits—Three (3) Months new hires

Prescription Drug Plan—Eighteen (18) months new hires ..... $3.00 deductible

Dental Care Plan—Eighteen (18) months new hires

Vision Care—Eighteen (18) months new hires

The details of the above will be found in the contracts furnished by the insurance company or companies and the rights of employees covered under these contracts will be found therein and become a part of this agreement.

Section 8. The employee is responsible for notifying the Company immediately when there is any change in their or their family's status with regard to all insurance policies or changes in information previously furnished to the Company.

Section 9. Employees who are laid off shall have the option to pay the first two premiums for basic health insurance (including vision) at the group rate. Payment must be made to the Company by the 20th day of the month in which the Company payment is due.

Section 10. All benefits cease when an employee is off work for one year.

ARTICLE XVI

GENERAL

Section 1. The Company agrees to make every effort to provide proper safety and sanitary conditions and devices in the plant. The use of safety glasses and hearing protection in the plant will be mandatory and will be enforced 100 percent as a condition of employment.

Section 2. When an employee who has been disabled and not working due to compensable injury or occupational disease is able to return to work, he may be placed at work by the Company on any job in its plant regardless of such employee's seniority rating. All employees of the Company waive their seniority rights to such extent in favor of such an employee who is able to and does return to work; provided, however, that such an employee shall have such preferred seniority only for ninety (90) days after his return to work. Whenever practical, such employee shall replace a junior em-

ployee. After such ninety (90) days, a review of the case shall be made by the Company and the Shop Committee to determine whether such ninety (90) days shall be extended.

Section 3. The Company will provide bulletin boards for the use of the Union to be located in central locations. All Union notices must be approved and posted by the Plant Manager or someone designated by him. The Union agrees that no Union notice shall be posted in any other part of the plant.

Section 4. Any employee who has been injured during working hours and is required to leave the plant for treatment or is sent home for such injury shall receive payment for the remainder of the shift on which the original injury occurred at his regular rate of pay providing a doctor or nurse designated by the Company advised that such employee is unfit for further work on that shift. An employee who declines light work within his capability forfeits pay for the balance of the shift.

Section 5. Nothing herein shall permit the Union or any of its members to assume authority to officiate in a managerial or supervisory capacity. The products to be manufactured, the location of the plant, the methods of manufacturing are solely and exclusively the responsibility of the Company.

Section 6. No foreman or assistant foreman shall perform the regular work of an employee, but this shall not be construed to prevent a member of the management from performing operations where an emergency arises, or for the purpose of investigation, inspection, experimentation, information, instruction, or otherwise as may be necessary in the discharge of their supervisory duties. Foremen shall when working on an employee's assigned machine have machine operator present to observe as much as possible.

Section 7. The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, of production at the Company's plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth therein. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out.

Section 8. It is understood and agreed that in the event of any strike, work stoppage, or interruption or impending of work on the part of the employees during the life of the agreement, there shall be no financial liability on the part of the International Union, the Local Union, or any of their officers, agents, or members. The sole recourse and exclusive remedy for the employer in such event shall be to impose disciplinary measures upon employees involved.

Section 9. It is agreed that production must be maintained and failure of an employees to do so will cause him or her to be disciplined. Where disciplinary action is involved, a steward will be notified before action is taken.

Section 10. Conditions covered in this contract are subject to State and Federal laws and rules and regulations imposed by any government agency.

Section 11. Economic issues shall not be a matter of negotiations within the period of this contract unless it is by mutual agreement between the Company and the Union.

Section 12. The parties believe that this contract is not in any part contrary to the provisions of any State or Federal law. In the event that it should be later found that a clause, sentence, or paragraph of this agreement is in derogation of the provisions of any State or Federal law, that portion of the contract shall give way to

the provisions of the State or Federal law, and if necessary to revise such clause, sentence, or paragraph, the parties will meet and negotiate the same, but all provisions of the contract not so in derogation shall continue in full force and effect without change until the termination of the contract.

Section 13. Employees shall notify the Company in case it is necessary for them to be absent from work. This notice is to be given on the day the employee is absent or previously and include reason for absence and expected duration. Such notice shall be given each day the employee is absent. Failure to comply with this rule makes the employee subject to disciplinary action.

Section 14. Whenever the masculine pronoun is used in this agreement, the feminine pronoun is also included.

ARTICLE XVII

DURATION

Section 1. This agreement shall become effective on the 5th day of January 1985 and remain effective until January 5, 1988, and from year to year thereafter unless written notice is given by either party to the other of its desire to terminate or modify the agreement at least sixty (60) days before the termination date or anniversary date thereof.

RING SCREW WORKS
H. R. CHAPPELL, JR.; G. D. SANDER

International Union United Automobile, Aircraft & Agricultural Implement Workers of America, Local Union No. 771

R. HEIDE, Pres. UAW Local No. 771

A. STIEBER, Int'l. Rep. Region 1B, UAW

SHOP COMMITTEE: R. LARAWAY, G. SCHAAL, D. WELSH, L. VROEGINDEWEY, K. HOLYFIELD, R. NANCARROW.

APPENDIX A

Rates as of January 5, 1985
excluding 5¢ per hour Cost-of-Living float

CLASSIFICATION	*Top Rate*	*Afternoon and Midnite Shift Prem.*	*Rate Range*
Header Set-Up Heavy Trimmer Set-Up Roller Set-Up	14.04	.55	1.15
Boltmaker 1/2 S.S. Boltmaker 3/8 5 Sta. Boltmaker 1/2 5 Sta. Boltmaker 3/8 L.S.	14.17	.56	1.15
Boltmaker 3/8 & 5/16 Boltmaker 1/2 L.S. Boltmaker 8L4	14.41	.56	1.15
Boltmaker 3/4 Boltmaker 3/8	13.85	.54	1.15
Production Leader	14.46	.56	1.15
Chief Ship Clerk	13.66	.54	1.15
Quality Control Supv.	14.65	.57	1.15
Machine Operator	12.40	.40	1.20
Janitor & Sweeper	12.29	.40	1.20
General Factory Worker 15¢ each 2 months	12.62	.50	1.95
Heat Treat Operator	13.71	.54	1.15

APPENDIX B—TOOLROOM EMPLOYEES

Rates as of January 5, 1985
excluding 5¢ per hour Cost-of-Living float

CLASSIFICATION	*Top Rate*	*Shift Prem.*	*Rate Range*
Toolmaker Repairman	15.23	.59	.75
Toolmaker	15.07	.59	.75
Toolroom Machine Hand **	14.78	.58	.75
Learner *	13.60	.53	1.05

* 15¢ each 3 months
** 15¢ each 8 months

For the second and third year of the contract a payment will be paid on January 15, 1986 and January 15, 1987. The payment will be computed at 2% of the employees earned wages only for hours worked during the previous year.

APPENDIX "C"

Cost-of-Living Allowance and
Annual Improvement Factor

Cost-of-Living Allowance

Effective at the beginning of the first pay period commencing on or after April 5, 1985 and thereafter during the period of this Agreement, each employee covered by the Agreement shall receive a cost-of-living allowance set forth.

The cost-of-living shall not be added to the base rate for any classification, but only to each employee's straight time earnings. The cost-of-living allowance shall be taken into account in computing overtime premium, night-shift premium, vacation payments, holiday payments, and call-in-pay.

Basis for Allowance

The cost-of-living allowance will be determined and redetermined as provided below in accordance with changes in the official revised Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. All Cities Average) published by the Bureau of Labor Statistics, U.S. Department of Labor (1967 = 100) and hereinafter referred to as the BLS Consumer Price Index.

Continuance of the cost-of-living allowance shall be contingent upon the availability of the BLS Consumer Price Index in its present form and calculated on the same basis as the BLS Consumer Price Index for November 1984.

During the life of this Agreement, any adjustment in the cost-of-living allowance that is in excess of five cents (5¢) per hour shall be made at the following times:

Effective Date of Adjustment	*Based Upon Three-Month Average of the BLS Consumer Price Index For:*
First pay period commencing on or after April 5, 1985 and at three-month intervals thereafter to October 5, 1987	December 1984, January and February 1985 at three-month intervals thereafter to June, July and August 1987

In determining the three-month average of the Indexes for a specified period, the computed average shall be rounded to the nearest 0.1 Index point.

The amount of the cost-of-living allowance shall be five cents (5¢) per hour effective with the effective date of this Agreement. Effective April 5, 1985, and for any period thereafter, as provided above, the cost-of-living

allowance shall be a 1-cent adjustment for each 0.3 change in the Average Index for the appropriate three months indicated above with the three month average of September, October and November 1984 as a base. In addition all rates of pay General Factory Worker and below shall receive 1/2 COLA adjustments until such time as the General Factory Worker rate equals 80% of the 1/2 SS Boltmaker rate.

Adjustment Procedure

In the event that Bureau of Labor Statistics does not issue the appropriate Consumer Price Index on or before the beginning of one of the pay periods referred to, any adjustments in the cost-of-living allowance required by such appropriate Indexes shall be effective at the beginning of the first pay period after receipt of the Indexes.

No adjustments, retroactive or otherwise, shall be made due to any revision which may later be made in the published figures for the BLS Consumer Price Index for any month or months specified above.

The parties to the Agreement agree that the continuance of the cost-of-living allowance is dependent upon the availability of the monthly BLS Consumer Price Index in its present form and calculated on the same basis as the Index for November 1984, unless otherwise agreed upon by the parties. If the Bureau of Labor Statistics changes the form or the basis of calculating the BLS Consumer Price Index, the parties agree to request the Bureau to make available for the life of this Agreement, a monthly Consumer Price Index in its present form and calculated on the same basis as the index for November 1984.

APPENDIX "D"

Pension Plan

Subject to approval of the Board of Directors and Stockholders, the Company will revise the pension plan established in 1955, hereinafter referred to as the "Plan", as follows:

(1) An insurance company shall be designated by the Company, and a contract executed between the Company and such insurance company, under the terms of which, a pension fund shall be established to receive and hold contributions payable by the Company, interest, and other income, and to pay the pensions provided by the Plan.

(2) The Company by payment of the contributions or amounts provided in the above mentioned insurance company contract shall be relieved of any further liability, and pensions shall be payable only from the insured fund.

(3) In the event of termination of the Plan, there shall be no liability or obligation on the part of the Company to make any further contributions to the pension fund. No liability for the payment of pension benefits under the Plan shall be imposed upon the Company, the Officers, Directors, or Stockholders of the Company.

(4) The Company reserves the right to amend, modify, suspend, or terminate the Plan by action of its Board of Directors provided, however, that no such action shall alter the Plan or its operation, except as may be required by the Internal Revenue Service for the purpose of meeting conditions for qualification and tax deductions under Sections 401, 404, and 501(a) of the Internal Revenue Code, in respect of employees who are represented under a collective bargaining agreement in

contravention of the provisions of any such agreement pertaining to pension benefits as long as any such agreement is in effect.

(5) Principal provisions of the pension plan are shown below, but the individual booklets which will be furnished each participant contain full information and will be based on the contract entered into with the insurance company.

Effective Date

January 5, 1985

ELIGIBILITY:

All employees who will have completed ten (10) or more years of continuous credited service at retirement.

NORMAL RETIREMENT DATE:

The normal retirement date of all employees will be age sixty-five (65). All employees will be retired on the first day of the month following their 70th birthday.

EARLY RETIREMENT:

If you have completed at least ten (10) years of credited service, you may retire between age sixty (60) and sixty-five (65). You may elect to receive:

(a) A pension at age sixty-five (65) based on your credited service up to your early retirement date.

(b) A pension beginning at your early retirement date based on your credited service up to that date but reduced in accordance with the early retirement table as detailed in the master pension contract.

Medical coverage for employees who elect early retirement with fifteen (15) years of service at age sixty-

two (62) or twenty-five (25) years of service at age sixty (60) for the life of the retiree only. In order to receive payment, retiree may not be employed full time nor earn more than $6,000.00 per year if self employed or working part time.

RETIREE MEDICAL COVERAGE:

Retirees will be reimbursed for maximum $15.50 monthly cost of Medicare from the pension fund. Future retirees will be covered by health insurance carrier with same health coverage as active employees. (Benefits will be coordinated with Medicare and all benefits will cease upon death of retiree.)

RETIREMENT INCOME:

Pensions will be in the amounts set forth below per month for each year of credited service at retirement with a maximum of thirty-seven (37) years. Current retirees 1980 through 1984 thirty-five (35) years maximum 1974 through 1979 thirty-three (33) years maximum. 1973 and prior thirty (30) years maximum. An employee retiring with less than ten (10) years of credited service is not eligible for benefits.

	Future 1/5/85 Per Mo.	*Future Present Per Mo.**
10 years but less than 15	14.00	10.20
15 years but less than 20	15.00	10.40
20 years but less than 25	16.00	10.60
25 years but less than 30	17.00	10.80
30 years and over	18.00	11.00

VESTED PENSION RIGHTS:

Minimum Continuous Credited Service—10 years

* Retirees' increased benefits will be payable as soon as the insurance company can revise program but not later than March 5, 1985.

DISABILITY INCOME:

Employees with at least fifteen (15) years of service who are between the ages of 40 and 65 will be eligible for a pension of $15.00 per month for each year of service in the event of total and permanent disability. At age 65, the employee will receive the regular retirement income based on service at disability date. The maximum payment shall be 25 years of service, less workmen's compensation benefits or any other disability payments as provided in the master pension contract, exclusive of social security disability payments. Subject to Internal Revenue Service approval.

(6) No matter respecting the plan or any differences arising hereunder shall be subject to the grievance procedure established in the collective bargaining agreement between the Company and the Union.

CONTINUED LIFE INSURANCE:

(7) Continued life insurance shall be provided for employees who are retired under the pension plan in the amount of $5,000.00

VACATION ATTENDANCE BONUS:

Subject to provisions hereafter enumerated, the Company will, beginning with the 1986 vacation year, pay a vacation attendance bonus during the vacation qualifying period of June 1 to June 1, provided that the total scheduled work day hours of work (Monday thru Friday only) during the qualifying period shall be in excess of: 1890 hours for a 2% bonus, 1990 for a 3% bonus, 2140 hours for a 4% bonus of gross pay.

1. Gross pay will be the gross of the 52 weekly pay periods ending prior to June 1 of the vacation year;

2. Each Employee will be allowed five (5) days of absence without penalty;

3. Any vacation days in excess of the following will be considered as absences: (Seniority based on June 1 to June 1)

   One (1) year seniority but less than three years—Five (5) consecutive work days

   Three (3) years seniority but less than ten (10) years—Ten (10) consecutive work days or two periods of five (5) consecutive work days

   Ten (10) years seniority or more—Fifteen (15) consecutive work days or ten (10) consecutive work days and five (5) consecutive work days

   Twenty (20) years seniority or more—Twenty (20) consecutive work days or fifteen consecutive work days plus five (5) consecutive work days or ten (10) consecutive work days plus two (2) periods of five (5) consecutive work days.

4. Any absence of a full work day (Monday through Friday and Saturdays (see No. 7) where entire plant is scheduled Saturday) in excess of allowed absences shall reduce his vacation bonus by $120.00 per day. This change effective June 1, 1985, and thereafter. In addition, any combination of tardiness or other straight time lost which adds to eight (8) hours shall be considered a day of absence for eight (8) hours of straight time lost. Any tardiness shall be charged a minimum of one-half (½) hour. Tardiness being any time (one minute) after starting time. Time missed prior to or after vacation periods which extends such vacation period shall reduce bonus by two times normal rate.

5. Time lost due to compensable injury will not be deducted.

6. Vacation attendance bonus to be paid July 1 or when employee goes on vacation, whichever is later, but not later than the last working day in August.

7. An employee who has worked less than one-half (½) of the scheduled Saturdays and holidays (Article XI, Section 3) shall be charged one day of each absence below the one-half (½) attendance requirement. In order to be credited with working a scheduled Saturday, the employee must work a minimum of seven (7) hours.

8. The employees shall have five (5) days per year (non-accumulative) over the life of the contract plus a total of eighteen (18) days which the Committee may make advanced application for credit during the life of the contract for approved Union business.

9. Computed bonuses which total less than $250.00 shall not be paid.

BEREAVEMENT PAY:

In the event of death in the immediate family of an employee (new employee after one year), said employee, upon proper application in writing and presentation of proof of death, shall be compensated for any scheduled working time lost Monday through Saturday (in order to qualify for Saturday pay, employee must have worked three (3) of last six (6) scheduled Saturdays) based on eight (8) hours days at straight time. This benefit is intended to compensate an employee only for scheduled working time necessarily lost by the death to the extent of and limited by three (3) scheduled working days on an eight (8) hour straight time basis. Immediate family shall mean spouse, child, mother, father, brother, sister, natural grandchild, spouse's child, mother, father, sister, brother. This benefit to begin at the time of death and end on the

day services are held and is not intended to compensate for time the employee may request after the service or other reasons. When Heat Treat Operators are scheduled seven (7) days they shall be eligible to receive Bereavement benefits for scheduled Sundays.

JURY DUTY:

The Company shall pay an employee (after one (1) year) who necessarily loses time from his job because he has been summoned to jury duty, as certified by the Clerk of the Court, the difference between his straight time average earnings for eight (8) hours per day and the daily jury fee. Maximum of (40) hours per week. No payment to be made if employee volunteers for jury duty. Jury duty shall not exceed forty-five (45) calendar days.

In order to be eligible to receive any credit for the time missed, an employee who is dismissed prior to 12:30 or is scheduled for only a part day shall report to work for the balance of the shift. Afternoon shift employees shall work the number of hours, beginning at his regular starting time, that a day shift employee would have been able to work.

January 8, 1980

Mr. Marian Czarnomski
Local 771 U.A.W.
20424 John R
Detroit, Michigan 48203

Dear Mr. Czarnomski:

In the course of 1980 negotiations the Company and Union agreed that the Company could schedule non-legal holidays as work days and that compensation for these days would be at time and one half. The Company additionally agreed that employee discipline would not be given for missing one of these scheduled days.

Additionally, if an employee is specifically asked if he (or she) is going to work scheduled or part shop operation overtime and the individual does not notify the Company prior to the starting time of the scheduled day, that he (or she) will not work, such employee shall be subject to disciplinary action.

Yours very truly,

RING SCREW DIVISION
H.R. CHAPPELL, JR.
President

HRCJr/cs

No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

When a collective bargaining agreement between an employer and a union subject to § 301 of the Labor-Management Relations Act of 1947 does not provide for final and binding arbitration to resolve contract disputes, but does permit the parties to resort to economic weapons over such disputes—and is silent on the contract's enforceability in court—is judicial enforcement of the contract in a § 301 suit thereby precluded?

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The court of appeals' opinion is reported at 822 F.2d 1061 and is reproduced at pp. 1a-12a of the appendix to the petition for a writ of *certiorari* (hereafter "Pet. App.").

The district court's orders granting the defendant's motions for summary judgment are unreported and are reproduced at Pet. App. 16a-29a.

JURISDICTIONAL STATEMENT

The court of appeals' opinion was entered on August 16, 1989. Pet. App. 1a. That court's order denying a timely petition for rehearing was entered on October 23, 1989. Pet. App. 15a. The *certiorari* petition herein was timely filed on January 22, 1990 and *certiorari* was

granted on March 19, 1990. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves § 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, which provides in pertinent part as follows:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Ring Screw Works ("the Company") discharged employees Arthur Groves and Bobby J. Evans; Groves for alleged absenteeism and Evans for alleged falsification of company records. Both Groves and Evans were represented for purposes of collective bargaining by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 771 ("UAW" or "Union"). At the time in question Ring Screw Works and UAW had negotiated and were parties to collective bargaining agreements covering the Company's employees. Pet. App. 2a.

The collective bargaining agreements provide, *inter alia*, that Ring Screw Works may discharge employees only for "just cause." In addition the agreements include a grievance procedure which provides that "[s]hould a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows." The agreements then set forth a four-step process, beginning with discussions between "the employee, his

steward and the foreman of his department" and culminating in Step 4 which provides in full that "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only." Pet. App. 3a-4a, n.2; Joint Appendix ("A.") pp. 16-17, 50-51.

Where "[a]n agreement is reached between the Company and the Shop Committee under the grievance procedure" that agreement is "binding." Where all negotiations have failed through the grievance procedure, the Union is effectively released of its no-strike pledge and the Company of its "no-lockout pledge." A. 17, 51-53. The no-strike clause in the collective bargaining agreement covering the *Groves* dispute included this no-strike clause:

> The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, or production at the Company's plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth herein. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out. [A. 33.]

The collective bargaining agreement covering the *Evans* dispute contained the same no-strike clause but also provided that "[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in [the no strike clause]." Pet. App. 3a-4a, footnote omitted; A. 53. The collective bargaining agreements are silent on the parties' right to sue over alleged conduct breaches. Pet. App. 3a-4a, 8a.

Following their discharges, both Evans and Groves sought their Union's assistance in regaining their jobs. Discussions were conducted pursuant to the collective

bargaining agreement's grievance procedure. Those discussions did not result in any settlement or compromise of the grievances. The Company refused UAW's offer to take both cases to binding arbitration. And the Union did not choose to invoke its option to strike. Pet. App. 4a-5a.

Evans and Groves, joined by their Union, then filed suit in state court to enforce the "just cause" provision of the collective bargaining agreements. Ring Screw Works removed both cases to federal district court invoking that court's jurisdiction under the federal labor law. In both cases, the district court granted summary judgment to the Company on the ground that plaintiffs were bound by the "result" of the grievance procedure and therefore could not seek judicial enforcement of the contract terms in the absence of proof that the Union violated its duty of fair representation.

The Sixth Circuit affirmed on the authority of its earlier ruling in *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982). Pet. App. 4a-8a. The panel hearing this case noted, however, that "other courts in comparable circumstances have reached a decision contrary to *Fortune*" citing *Dickeson* v. *DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987), and that "[w]ere we deciding the issue with a clean slate, we might be disposed to adopt the rationale of *Dickeson*." Pet. App. 8a, 11a.

SUMMARY OF ARGUMENT

1. The question in this case is whether judicial enforcement of a collective bargaining agreement subject to § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), is precluded when the agreement does not provide for final and binding arbitration to resolve contracts disputes, permits the parties to resort to economic weapons over such disputes and is silent on the contracts' enforceability in court. *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957) instructs "that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws."

Lincoln Mills establishes also that § 301(a) itself embodies the particular legislative policies that govern this case. The Court there explained that the principal purpose of § 301(a) is to assure that collective bargaining agreements are binding and enforceable; this "will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace." *Id.* at 453, 454, quotation marks omitted. It should be wholly antithetical to these policies to construe an agreement that simply *permits* the use of economic force as *precluding* judicial enforcement. Thus, the decisions of the Seventh and Ninth Circuits which, addressing the identical question that is presented here, determined that an agreement must expressly oust the courts of jurisdiction before it will be so construed correctly capture the essence of congressional policy. See *Associated Gen Contr. of Ill.* v. *Illinois Confr. of Team.*, 486 F.2d 972 (7th Cir. 1973); *Dickeson* v. *DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987).

Lincoln Mills holds further that "Congress adopted [in § 301(a)] a policy which placed sanctions behind agreements to arbitrate grievance disputes." 353 U.S. at 456. That policy is further buttressed by LMRA § 203(d) which declares that "final adjustment by a method agreed

upon by the parties is . . . the desirable method for settlement of grievance disputes. . . ." But as *Associated Contractors* recognizes, nothing in § 203(d) goes further and bespeaks a preference for strikes and lockouts over judicial enforcement of labor contracts. It is perhaps conclusive that such an extension of § 203(d) would be irreconcilable with the policy underlying § 301(a). Moreover, the key word in § 203(d)—"adjustment"—simply does not encompass the product of resort to economic weapons. This clearly appears from the use of that word in other provisions of the statute, see LMRA §§ 9(a), 201(c) and 209(a) and as a term of art in the labor field which refers to the peaceful resolution of contract disputes, see § 3 First of the Railway Labor Act which establishes the National Railroad Adjustment Board whose function is to conduct compulsory arbitration of grievance disputes under the RLA. Finally, to read § 203(d) as *favoring* strikes and lockouts would be inconsistent with the very point of LMRA Title II, as a whole which is to express a preference for peaceful means of settlement chosen by the parties. See §§ 203(c) and 204(a).

2. The court below held that the strike is petitioners' exclusive remedy for the employer's alleged breach of contract although it found that the "agreement does *not* expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration." Pet. App 8a, emphasis added. And that court pointed to no bargaining history or other extrinsic evidence—respondent introduced none—which would permit the conclusion that resort to the court was not to be permitted.

3. The court below reached its conclusion on the authority of its prior decision in the *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982), which we submit was not soundly reasoned.

The *Fortune* court stated that in the absence of a contractual provision for arbitration "we are cited to no

provision of federal law which gives the federal courts the power to" break a deadlock dispute over a grievance. *Id.* at 375. Plainly, the Court overlooked § 301(a) which is a provision whose principal purpose is to give the federal courts the power to enforce collective bargaining agreements.

The *Fortune* court also relied on the policy of § 203(d) that, in settling grievance disputes, the method chosen by the parties should be adhered to; but the methods of peaceful adjustment referred to in that provision, like judicial contract enforcement decisions, involve addressing a grievance dispute *on its merits* rather than on the basis of the economic strength of the respective parties, which do not depend at all on the terms of the contract or the facts underlying the grievance. Thus, in contrast to arbitration, the strike and lockout are wholly unlike judicial enforcement of a contract and cannot be implied to be a substitute therefor.

Finally, the *Fortune* court relied on the well-settled principle that an employee is bound by the remedies which are bargained for by his representative. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965). But that principle simply does not come into play in this case, where the agreement does not, expressly or fair implication of fact or law, bar the judicial remedy provided by § 301(a).

ARGUMENT

Section 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), provides that "[s]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States." In enacting § 301(a), then, Congress "made such agreements enforceable in the courts by either party." *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 453 (1957) ("*Lincoln Mills*").

It is our position *first*, that the governing rule of federal labor contract law here is that a collective bargaining agreement is enforceable through the usual processes of the law unless the agreement plainly and unequivocally states that it is *not* enforceable through those processes; and, *second*, that an agreement that provides for a grievance procedure that is not final and binding in the event the parties do not agree, that reserves to the parties the right to use economic force in the event of a deadlock, and that is otherwise silent on the question of enforcement does *not* plainly and unequivocally state that it is not enforceable in court.

To put it another way, our position here is that the leading court of appeals case in point—*Associated Gen. Contr. of Ill.* v. *Illinois Conf. of Team.*, 486 F.2d 972 (7th Cir. 1973) ("*Associated Contractors*")—both asks the right question and gives the right answer:

> The Union . . . makes the narrow claim that under the terms of this particular contract, the parties had agreed that deadlocked grievances would be resolved by economic recourse without resort to the courts.
>
> Unquestionably "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." See *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564, 566. [An accompanying footnote quotes LMRA § 203(d).] But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do.
>
> [W]e . . . do not . . . construe the agreement as requiring economic warfare as the exclusive or even as a desirable method settling deadlocked grievances . . . There is no plain language in the contract compelling parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than this. [486 F.2d at 976, footnotes omitted.]

See also *Dickeson* v. *DAW Forest Products Co.*, 827 F.2d 627, 629-30 ("*Dickeson*") (9th Cir. 1987) (citing and following *Associated Contractors*).

1(a). The rule of federal labor contract law stated in *Associated Contractors* and *Dickeson* follows so directly from the legislative materials as to make extensive elaboration unnecessary.

As is now familiar, in *Lincoln Mills*, the Court

> conclude[d] that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws. [Citation omitted.] The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. [353 U.S. at 456-57.]

Lincoln Mills, moreover, establishes that § 301(a) itself embodies the particular legislative policies that govern

this case. The Court there explained that the principal purpose of § 301(a) is to assure that collective bargaining agreements are binding and enforceable:

> Both the Senate and the House took pains to provide for "the usual processes of the law" by provisions which were the substantial equivalent of § 301 (a) in its present form. Both the Senate Report and the House Report indicate a primary concern that unions as well as employees should be bound to collective bargaining contracts. But there was also a broader concern—*a concern with a procedure for making such agreements enforceable in the courts by either party.* At one point the Senate Report *supra*, p. 15, states, "We feel that the aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made . . . .'" [353 U.S. at 453; emphasis added.][1]

Indeed, as the Court then noted, "Congress was also interested in promoting collective bargaining that ended with agreements not to strike". *Id.* And the ultimate point of § 301(a), said the Court, was stated in

> Senate Report [No. 105, 80th Cong., First Sess.] p. 17, [which] summed up the philosophy of § 301 as follows: "Statutory recognition of the collective agreement as a valid, binding and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.'" [353 U.S. at 454.]

It would be wholly antithetical to this legislative policy in favor of "making [labor] agreements enforceable in

[1] The respective Congressional Reports are S. Rep. No. 105, 80th Cong., First Sess.; H.R. Rep. No. 245, 80th Cong., First Sess.; H.R. Conf. Rep. No. 10, 80th Cong., First Sess.

the courts" to construe an agreement which is anything less than crystal clear in this regard as precluding judicial enforcement. And given Congress' intent in enacting § 301(a) to "promote a higher degree of responsibility upon the parties to [labor] agreements" in order to "promote labor peace", it would be particularly anomalous to construe an agreement that simply permits the use of economic force as precluding judicial enforcement. As the Ninth Circuit stated in *Dickeson*, *supra*:

> Although the right to strike is protected, it is not a preferred method for resolving differences. Prohibiting access to the courts bypasses an opportunity to use reason in favor of "economic warfare." *Associated General Contractors*, 486 F.2d at 976. Although parties to a collective bargaining agreement may choose to designate strikes as the sole means of objecting to management decisions, we think they must do so expressly before we may find judicial divestment. No preference need be accorded strikes as a noble dispute resolution mechanism. Accordingly we conclude that the grievance procedure was not intended to be final. [827 F.2d at 629-30.]

See also, pp. 8-9, *supra*, quoting *Associated Contractors*, 486 F.2d at 976.

(b) *Lincoln Mills* holds too

> that Congress adopted [in § 301(a)] a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common-law rule, discussed in *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, against enforcement of executory agreements to arbitrate. [353 U.S. 456, footnote omitted.]

In *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 578 (1960), the Court added:

> The present federal policy is to promote industrial stabilization through the collective bargaining agreement. . . . A major factor in achieving industrial

> peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.

The Court then emphasized that in this context labor "arbitration is the substitute for industrial strife". *Id.* LMRA § 203(d)—which provides "final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement . . ."—of course, further buttresses the policy in favor of such final and binding arbitration of contract grievances. See, e.g., *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566-67 (1960).

The 1947 Congress, in other words, took a broader view of the "usual processes of the law" for enforcing collective bargaining agreements than the common law had traditionally taken with regard to commercial contracts. It was Congress' judgment, embodied in §§ 301(a) & 203(d), that final and binding labor arbitration—like judicial determination of the meaning and effect of a collective bargaining agreement—is a salutory means of making such agreements enforceable and of promoting labor peace.

But as *Associated Contractors* recognizes, nothing in § 203(d) goes further and bespeaks a preference for strikes and lockouts over judicial enforcement of labor contracts. See 486 F.2d at 976, quoted at p. 9, *supra*.

It is perhaps conclusive that such an extension of § 203(d) would be irreconcilable with the policy underlying § 301(a), which, as we have just seen, strongly favors *peaceful* means of settling contract disputes. And the LMRA's language and structure confirm that there is no such conflict.

In the first place, the key word in § 203(d)—"adjustment"—as used in the LMRA, simply does not encompass results brought about by the resort to economic weapons. For example, § 209(a) provides:

> Whenever a district court has issued an order under section 208 of this Act enjoining acts or practices which imperil or threaten to imperil the national health or safety, *it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle* their differences, with the assistance of the [Federal Mediation and Conciliation] Service . . . . [Emphasis added.]

Since this provision is operative only where a strike or lockout has been enjoined pursuant to § 208, it is clear that an "effort to adjust and settle" excludes resolving a dispute by economic force. See also §§ 201(c) and 9(a) which are set forth in pertinent part in the margin, in which "adjustment" clearly does not include a strike by a union or lockout by an employer.[2]

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[2] Section 201(c) provides:

> It is the policy of the United States that—
>
> * * *
>
> certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision . . . . *for the final adjustment of grievances or questions regarding the application or interpretation of such agreements* . . . . [Emphasis added.]

Section 9(a) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 29 U.S.C. § 159(a), provides:

> Representatives designated or selected for the purposes of collective bargaining . . . shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . . *Provided*, That *any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted*, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present *at such adjustment*. [Emphasis added.]

Indeed, "adjustment" has been, since well before 1947, a term of art in the labor field which refers to the peaceful resolution of contract disputes. The National Railroad Adjustment Board established by § 3 First of the Railway Labor Act, 45 U.S.C. § 153 First, to take one instance, has as its function the resolution of contract disputes through peaceful processes. As stated in *Trainmen* v. *Chicago R. & I.R. Co.*, 353 U.S. 30, 39 (1957), "the provisions dealing with the Adjustment Board [are] to be considered as compulsory arbitration in this limited field", *i.e.*, the resolution of grievance disputes under the RLA.

Moreover, even if it were otherwise possible, it would be paradoxical to read § 203(d) as *favoring* strikes and lockouts over judicial enforcement of a collective bargaining agreement. The very point of LMRA Title II as a whole is to express a preference for peaceful means of settlement which are chosen by the parties. This is confirmed most clearly by § 203(c) which provides in part:

> If the Director [of the FMCS] is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute *without resort to strike, lockout, or other coercion*, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the director shall not be deemed a violation of any duty or obligation imposed by this chapter. [Emphasis added.] [3]

[3] So too, a preference for strikes as "a method of adjustment" is wholly inconsistent with the direction in § 204(a):

> In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—
>
> (1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;
>
> (2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrangement promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and
>
> (3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

An interpretation of § 203(d), which would encompass the resort to economic weapons, would also render § 204(a) inconsistent with the second sentence of § 203(d): "The [Federal Mediation and Conciliation] Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

(c) In short, § 301(a) states a preference for industrial stability during the term of a collective bargaining agreement achieved through such peaceful methods of resolving contract disputes as arbitral and judicial enforcement of the agreement's terms. Congress' judgment in that regard entails the conclusion that "[a]lthough parties to a collective bargaining agreement may choose to designate strikes as the sole means of objecting to management decisions . . . they must do so expressly before [the courts] may find judicial divestment. No preference need be accorded strikes as a noble [contract] dispute resolution mechanism." *Dickeson*, 827 F.2d at 630.

2. In holding that the strike is petitioners' exclusive remedy for an alleged employer breach of the collective bargaining agreements here, the court below did not rely on any language in the agreements which so provides. Indeed, that court found: "The agreement does *not* expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration." Pet. App. 8a, emphasis added.

To be sure, respondent insisted in its brief in opposition to the *certiorari* petition (at 7) that the "Union bargained for and agreed to the strike lock-out option as the final step in dispute resolution if the grievance procedure failed to resolve the matter." But respondent pointed to nothing in the agreements which provide that this "option" is the exclusive method for dispute resolution. Nor could respondent have done so. As the court of appeals found:

> Both CBAs [collective-bargaining agreements] prescribed a multi-step grievance procedure in which the employee, management representatives, and union representatives were called upon to resolve the dispute. If the parties are unable to resolve the grievance, binding arbitration is available only "by mutual agreement in discharge cases only."
>
> In addition, Groves' CBA included this no strike clause:
>
> > The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, or production at the Company's plant during the terms of this agreement until all negotiations have failed through the grievance procedure set forth herein. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out.
>
> Evans' CBA contained the same no strike clause but also provided that "[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in [the no strike clause]." [Pet. 3a-4a, footnote and emphasis omitted.]

There is simply nothing in the agreements which expressly, or by fair implication from the words, provide that where the employer has not agreed to arbitrate the dispute and the union chooses not to strike, the judicial

remedy provided for in § 301(a) would be unavailable. It is worth particular emphasis that the agreements are silent on judicial enforcement and do not contain a word stating or even suggesting that the option to use economic force is exclusive of the right to go to court created by § 301(a) itself. Nor is there any support for the decision below in the agreements' bargaining history or in any other extrinsic evidence. The employer, in seeking to prevent judicial enforcement on the grounds that the contract was understood by the parties to waive such enforcement, introduced no evidence of conduct, bargaining history or past practice in support of its position.

3. The court of appeals reached the conclusion that petitioners do not have a cause of action under § 301(a) solely on the authority of that court's prior decision in *Fortune* v. *National Twist Drill*, 684 F.2d 374 (6th Cir. 1982), which involved a collective bargaining agreement in all pertinent respects identical to that herein. See *id.*, quoted at Pet. App. 7a. We submit that *Fortune* was not soundly reasoned.

(a) The Sixth Circuit said in *Fortune*:

> Where the parties have failed to agree upon arbitration as a method of breaking a deadlocked dispute over a grievance, we are cited to no provision of federal law which gives the federal courts the power to make the decision for the parties. [684 F.2d at 375.]

We take it that the "decision" referred to is the decision as to what the labor contract means, and how the contract properly interpreted applies to the "deadlocked dispute over [the] grievance" in question. And whatever may or may not have been "cited" by the parties in *Fortune*, it is indisputable that § 301(a) *is* a "provision of federal law which gives the federal courts the power to make this decision for the parties" where they have not agreed on arbitration as the method for resolving a grievance dispute. As we have seen, the principal purpose and

function of § 301(a) is precisely to provide for the enforcement of collective bargaining agreements through the usual processes of the law. And the essence of those processes is a determination as to what the agreement means, and whether the agreement has been breached.

It is true, as *Lincoln Mills* squarely holds, that promises to arbitrate are among those that are to be enforced under § 301(a). But as the legislative materials canvassed in that opinion demonstrate, it would turn matters upside down to limit § 301(a) to enforcing promises to arbitrate. See pp. 10-11, *supra*. Not surprisingly then that provision has *not* been so limited. Thus, for example, in *Atkinson* v. *Sinclair Rfg. Co.*, 370 U.S. 238 (1962), this Court held that since the agreement between the parties did not provide for arbitration of a dispute based on the employer's claim that the union had breached the agreement, § 301(a) by its terms provides that the employer's suit against the union for that breach could go forward in court. See also, *e.g.*, *Smith* v. *Evening News*, 371 U.S. 195 (1962).

(b) The *Fortune* opinion also quotes with approval the following passage from *Haynes* v. *United States Pipe & Foundry Company*, 362 F.2d 414, 416 (5th Cir. 1966):

> Congress explicitly stated, by way of a policy, in § 203(d) of the Taft-Hartley Act, 29 U.S.C. § 173(d), that in settling grievance disputes, the Act contemplated that the method agreed upon by parties to collective bargaining agreements should be the means of settling such disputes. In suits under § 301(a), the Supreme Court construed this policy as requiring the courts to give full play to the means chosen by parties to a collective bargaining agreement for settlement of their differences. [Footnote omitted.]

In *Haynes*, the agreement provided *expressly* that decisions on a grievance "by the Plant Manager shall be final and binding upon all parties involved unless the International Vice President of the Union notifies the

Plant Manager . . . of the Union's intentions to strike in protest of such decision," and that "such strike shall commence on the fourth workday following the date said notice is mailed to the company." *Id.* at 415-416. Thus, the Fifth Circuit may well have been justified in reading that agreement as one manifesting the parties' intent to make the strike the exclusive means for resolving disputes. But as we have shown, there is no similar language in the present agreement that would justify that conclusion here.

The *Haynes* opinion goes on to state:

> Subsequent to *Lincoln Mills*, this policy of giving full play to the means chosen by the parties for resolving disputes has been given further shape in various Supreme Court opinions. Of the three available forums for the resolution of disputes—contractual grievance procedure such has arbitration, or the court, or the picket line—the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement. Employers are denied access to the courts where the parties have previously chosen the arbitration remedy. . . . Likewise, a union has been denied access to the picket line where it has chosen arbitration. . . . The court has opened the doors of the courthouse only when the parties have chosen this forum over the others. . . . [362 F.2d at 416-17, citations omitted.]

If, by the foregoing, the Fifth Circuit meant that the "three available forums" of "arbitration, or the court, or the picket line" are in all instances mutually exclusive as a matter of law, and that this Court has so decided, that court was in error.

Lincoln Mills and its progeny do make it clear that the courts are to enforce promises to arbitrate and arbitration awards and establish as well that an agreement to arbitrate bars the courts from deciding the merits of the underlying grievance dispute. See, e.g., *AT&T Technologies* v. *Communication Workers*, 475 U.S.

643, 648-51 (1986) (summarizing the relevant principles). But those rules do not rest on any conception of "three available forums for the resolution of disputes" each in its own tightly isolated compartment. Rather, the rules on arbitration rest on the recognition that §§ 301(a) & 203(d) embody a policy in favor of final and binding labor arbitration of grievances and that a later judicial determination of the merits of the grievance would undermine the congressional purpose in making promises to arbitrate binding.[4] In contrast, as we have seen, §§ 203 (d) and 301(a) embody no such policy favoring strikes to resolve grievance disputes.

Thus, the essence of the matter here is that resort to economic weapons in the event that a contract dispute is not resolved is plainly *not* the equivalent—in practical or in congressional policy terms—of final and binding arbitration. Labor arbitration decisions, like judicial contract enforcement decisions, provide a *peaceful* means of resolving the contract dispute by *addressing its merits* in terms of what the agreement in question says and means. The enforcement of the contract in this way "promote[s] a higher degree of responsibility upon the parties," S. Rep. No. 105, 80th Cong., First Sess., *supra*, p. 10.

A strike or lockout, in sharp contrast, resolves a dispute on the basis of the economic strength of the union and the employer, which do not depend at all on the terms of the

[4] As the Court explained in *Warrior & Gulf*, *supra*:

> The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts. . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed. [363 U.S. at 581-82.]

The LMRA's policy in favor of final and binding arbitral proceedings is not limited to arbitration on the *Steelworkers* model. See *Truck Drivers Union* v. *Riss & Co.*, 372 U.S. 517 (1963) (enforcing the final and binding award of a joint union-employer committee). Accord: *Humphrey* v. *Moore*, 375 U.S. 335, 351 (1964).

contract or the facts underlying the grievance. The prevailing party's position may be squarely contrary to the agreement's language and bargaining history and to the true meeting of the minds that occurred when the contract was formed. Indeed, what the agreement means and what the parties intended in making the agreement are entirely immaterial in determining who will prevail in the strike or lockout.

Dispute resolution through economic strength, then, has nothing to do with the merits of the grievance or with "promoting industrial peace" through "valid, binding and enforceable contract[s]," S. Rep. No. 105, 80th Cong., First Sess., *supra*, p. 17. Such dispute resolution, in short, is wholly unike that of enforcement of a contract through the usual processes of the law.

(c) The *Haynes* and *Fortune* opinions relied also on the well-established rule that the remedy selected by the union as his agent is binding on the individual employee who has a contractual grievance. See 362 F.2d at 417, citing *Republic Steel* v. *Maddox*, 379 U.S. 650 (1965); 684 F.2d at 375, citing *Harris* v. *Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167 (5th Cir. 1971). This was also the principal theme of respondent's brief in opposition.

The *Republic Steel* rule is an important adjunct of the policy embodied in § 203(d).[5] But the proposition that

[5] In *Republic Steel*, Justice Harlan stated, in part:

> A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition to cutting across the interests already mentioned, *it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances.* If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negtoiation and administration of collective agreements." *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95, 103 [379 U.S. at 653, emphasis added.]

the employee is limited to the remedies provided by the contract *invites* the question: "What remedies does the contract provide?"; it does not answer that question. Nor does that proposition answer the question whether a particular remedy is exclusive where the contract is silent in this regard.

In *Haynes*, the contract could fairly be read to provide expressly that the strike would be the exclusive method; therefore, under the *Republic Steel* rule, the employees' suit was properly dismissed. But here—as in *Fortune*—the contract does not so state. It is necessary to look to policies other than that which makes the parties' choice of remedies exclusive to resolve that question. And, as we have seen, the legislative policies which *are* germane to this issue point uniformly and unequivocally to the conclusion that recourse to the courts should be permitted.

The Sixth Circuit in *Fortune* thus profoundly misunderstood the national labor policy at every step in its analysis. It is the Seventh and Ninth Circuits' conclusion in *Associated Contractors* and *Dickeson*—that collective bargaining agreements which permit strikes to resolve grievance disputes should *not* be construed to negate the § 301(a) right to judicial enforcement unless the agreement expressly so provides—that captures the essence of the federal law of labor contracts.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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No. 89-1166

In The

Supreme Court of the United States

October Term, 1989

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION UAW,

Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,

Respondent.

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Can an employee and his union, after obtaining an unfavorable result pursuant to a collectively bargained dispute resolution process with which both parties fully complied, file an independent claim against the employer in federal court under § 301 of the Labor-Management Relations Act of 1947 to reverse the result?

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BRIEF FOR THE RESPONDENT

STATUTORY PROVISIONS INVOLVED

This case involves the following provisions of the Labor-Management Relations Act of 1947 (LMRA), 29 U.S.C. § 151 *et seq.*:

1. Section 201(b), 29 U.S.C. § 171(b), which provides:

> It is the policy of the United States that –
>
> (b) The settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining *or by such methods as may be provided for in any applicable agreement for the settlement of disputes.* (Emphasis added).

2. Section 203(d), 29 U.S.C. § 173(d), which provides: "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . . "

3. Section 301(a), 29 U.S.C. § 185, which provides:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor

> organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

COUNTER-STATEMENT OF THE CASE

Ring Screw Works and its employees have had their employment relationship governed by the collective bargaining process since the early 1950's.[1] The collective bargaining agreements in effect at the time Petitioners were discharged were entered into by Ring Screw Works (the Company) and UAW Local 771 (the Union), on January 5, 1985. These collective bargaining agreements set forth a detailed dispute resolution process which the parties agreed to follow.

Article IV, Section 1 of the collective bargaining agreements provided that if a difference arose between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort would be made to settle the difference through a multi-step grievance procedure. The first four steps of the grievance procedure were compulsory.

[1] The Ferndale Fastener Division of Ring Screw Works was initially part of the Ring Screw Division bargaining unit for collective bargaining purposes. The employees' chosen bargaining representative was UAW Local 771. In 1961, Ring Screw Division and Ferndale Fastener became separate bargaining units, both of which continued to be represented by UAW Local 771.

Step 1 required the employee and his union steward to present the grievance to his foreman. If the matter was not resolved,

Step 2 required the Manufacturing Manager or his alternate to hear the grievance presented by the employee and his steward. If the matter was not resolved,

Step 3 provided that the Union's elected six-employee Shop Committee present the grievance to Company Management. If a satisfactory settlement was not reached,

Step 4 provided that a Local or International Union Representative joined the Shop Committee in presenting the grievance to Company Management,

Step 5, which was elective, provided that if the matter remained unresolved. "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only)."

Jt. App. 51.

If a grievance remained unresolved at the conclusion of Step 5, the process continued pursuant to Article IV, Section 4, which provided "unresolved grievance (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7." Jt. App. 53.[2] The next step in the

[2] This language is contained in the collective bargaining agreement governing Petitioner Evans onl,. Petitioners conceded, however, as noted by the Sixth Circuit, that "both agreements have grievance procedures that are similar but not identical. *The differences are immaterial to the issue in the case.*" Pet. App. 7a. (Emphasis added).

dispute resolution process, as set forth in Article XVI, Section 7, was that the Union was given the option to strike and the Company was given the option to lock-out. Jt. App. 69.

In 1985, the Company discharged Petitioners Arthur Groves and Bobby J. Evans. Mr. Groves, an hourly employee at the Ferndale Fastener Division of Ring Screw Works, was discharged for excessive absenteeism. Mr. Evans, an hourly employee at the Ring Screw Division of Ring Screw Works, was discharged for falsifying company records. Both Petitioners were represented for purposes of collective bargaining by UAW Local 771. Each Petitioner claimed he had been discharged in violation of the collective bargaining agreement. Each attempted to gain reinstatement to his job by following the dispute resolution process set forth in the collective bargaining agreement. Pet. App. 2a.

Petitioners do not dispute that the grievance procedures were properly followed to their conclusion, nor do they dispute that they received competent representation from their Union. In each Petitioner's case, the Company declined arbitration, as was its right. Pursuant to the provisions of the collective bargaining agreements, this left the Union with the final option to strike, which it declined to exercise in both cases. Pet. App. 4a.

Petitioners, joined by their Union, then sought to resurrect their grievances in the federal court, claiming the Company breached the collective bargaining agreement by discharging Petitioners without just cause. Since Petitioners were merely dissatisfied with the results of their bargained-for dispute resolution process and could

show no legally cognizable reason for judicial review of their claims, the Company moved for summary judgment in each case. The United States District Court for the Eastern District of Michigan, Southern Division, granted the Company's Motion for Summary Judgment in each case, holding that Petitioners were bound by the terms and remedies of their respective collective bargaining agreements. Pet. App. 18a-29a.

Both Petitioners appealed. The United States Court of Appeals for the Sixth Circuit affirmed the trial court's decisions. Pet. App. 1a-12a. Petitioners' request for an en banc hearing before the Sixth Circuit was denied. Pet. App. 15a. Petitioners now seek this Court's review of the judgment of the Sixth Circuit.

SUMMARY OF ARGUMENT

The question presented is whether an employee and his union, after obtaining an unfavorable result pursuant to a collectively bargained dispute resolution process with which both parties fully complied, may file an independent claim against the employer in federal court under § 301 of the Labor-Management Relations Act of 1947 to reverse the results. Petitioners assert that such a right exists pursuant to the holding in *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957). The legislative history of the LMRA and the decisions of this Court construing the Act, however, demonstrate that § 301 was never intended to provide an aggrieved employee and his union the opportunity to resurrect the grievance before the court if the end result of the bargained-for dispute

resolution mechanism contained in the collective bargaining agreement was not to his liking. *See Lincoln Mills, supra; Vaca v. Sipes,* 386 U.S. 171 (1967).

Section 203(d) of the LMRA, 29 U.S.C. § 173(d), provides that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

The method chosen by UAW Local 771 and Ring Screw Works for the adjustment of disputes was that if the matter remained unresolved after completion of Step 5 in the grievance procedure, the aggrieved party was provided the option to strike or lock-out. In this case, Petitioners' Union declined to strike on Petitioners' behalf, thereby finalizing denial of the grievance.

Petitioners now advance two arguments in support of their claim that they are not bound by the results of the method agreed upon by the parties for resolution of grievance disputes. Petitioners claim: (1) the method agreed upon by the parties was not intended to be final and (2) the method agreed upon by the parties was not an acceptable method to reach a final adjustment.

Contrary to these assertions, the legislative history of the LMRA and the decisions of this Court construing the Act demonstrate that the parties are bound by the terms of the agreements they negotiate. Further, this Court has made clear that the method of dispute resolution contained in the collective bargaining agreement is the final, binding and exclusive remedy of the parties, whether or not the agreement contains explicit finality language. *See*

Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); *Bowen v. United States Postal Service,* 459 U.S. 212 (1983). Moreover, the right to strike has long been recognized as an acceptable method of reaching adjustment of disputes. *See NLRB v. Erie Resistor Corp.,* 373 U.S. 221 (1963); *NLRB v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175 (1967); *Buffalo Forge Co. v. United Steelworkers of America,* 428 U.S. 397 (1976).

The history of American industry illustrates the significant reliance management and labor necessarily attach to their collectively bargained agreements. The provisions agreed upon, including the method of achieving dispute resolution, constitute a self-contained adjudicative mechanism. The establishment of contractual promises which give rise to individual claims is premised upon the principle that by creating a contractual adjudicative mechanism, the parties prefer internal resolution of disputes to external court intervention.

In particular, Respondent submits that any collective bargaining agreement containing a dispute resolution process culminating in the right to strike evinces the intent of the parties to reject outside adjudication, absent qualifying language to the contrary. By providing the ultimate remedy of strike, which otherwise arises only in the negotiation of the contract, the parties have attached the same importance to the resolution of grievances that exists in formulating the agreement itself. The overriding theme of § 301 is that parties must abide by their agreements. When the ultimate recourse chosen is resort to economic sanctions, the absence of any evidence of legislative intent to mandate judicial or arbitral intervention requires that the parties be left to their chosen remedies.

ARGUMENT

(1) The Method of Dispute Resolution Agreed Upon by the Parties Must be Regarded as Final:

Petitioners argue that they are not bound by the results of the dispute resolution mechanism to which they agreed because the collective bargaining agreements do not expressly state that the results of the dispute resolution process were Petitioners' final, binding and exclusive remedy. The legislative history of the LMRA and the cases which have interpreted the Act lead to the conclusion that the means chosen by the parties for adjustment of disputes contained within a collective bargaining agreement are the exclusive, final and binding remedy of the parties, whether the collective bargaining agreement has explicit finality language or not.

The primary intent of Congress in enacting the LMRA was to provide that unions, as well as employers, be bound by the collective bargaining agreements into which they entered. Until the passage of the LMRA, unions could not be sued as legal entities for violations of collective bargaining agreements under the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq*. Unions were, therefore, virtually free to strike during the term of a collective bargaining agreement in violation of a no-strike clause. By including unfair labor practices which could be charged against the union (29 U.S.C. § 158(b)) and by providing that unions could sue and be sued as legal entities (29 U.S.C. § 185), Congress made labor unions responsible for the contracts into which they entered.

In enacting § 301, Congress expressed its belief that industrial peace could be achieved only if the parties

were held to the terms of the agreements into which they entered, as follows:

> If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.[3]

Under § 301(a), aggrieved parties gain access to federal court to enforce the collective bargaining agreement if the other party fails to abide by the terms of the agreement.[4]

Access to the courts under § 301 was considered by this Court in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). In *Lincoln Mills*, this Court held that the substantive law to be applied in suits brought under § 301(a) was federal law, which the courts must fashion from looking at the policy of the legislation. After examining the legislative history of the LMRA, the Court in

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[3] S. Rep. No. 105, 80th Cong., 1st Sess., p. 16 (1947).

[4] Section 301(a) provides: "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having jurisdiction over the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185.

Lincoln Mills held that the parties were bound by the grievance procedure they had negotiated.

In *Lincoln Mills*, the employer and the union had negotiated a collective bargaining agreement which provided that the last step in the grievance procedure was arbitration. The contract provided that arbitration was mandatory if requested by either party. The grievances at issue were processed through the grievance procedure and were denied by the employer. The union requested arbitration and the employer refused. The union then brought suit to compel arbitration. *Id.* at 449. The issue before the Court in *Lincoln Mills* was whether § 301 should be narrowly read as only conferring jurisdiction over labor organizations upon federal courts. The Court held that such a narrow reading of § 301 would undercut the LMRA. The Court, therefore, held that § 301 was not merely jurisdictional, but rather authorized federal courts to fashion from the policy of our national labor laws a body of federal law for the enforcement of collective bargaining agreements. *Id.* at 456.

Thus, when the Court in *Lincoln Mills* quoted Senate Report No. 105, p. 15, which said, "[w]e feel that the aggrieved parties should also have a right of action in the federal court . . . ", it was doing so in the context of determining whether the federal court had jurisdiction to compel parties to abide by the terms of their collective bargaining agreement. *Id.* at 453. Petitioners' use of this quote to stand for the proposition that an employee and his union, unhappy with the results of the dispute resolution process, may disregard the exclusivity of that procedure and seek judicial review of the subject matter of the original grievance misstates the law. The *Lincoln Mills*

Court determined that the legislative history of the LRMA clearly dictated that both the union and the employer should be bound by the dispute resolution process in the collective bargaining agreement which they had entered. The Court, therefore, permitted resort to the federal courts under § 301 to compel the employer to live up to its agreement to submit to arbitration.

Petitioners' attempt to gain access to the court under § 301 because they are dissatisfied with the results of the bargained-for grievance procedure would utilize § 301 in a way never intended by Congress and never permitted by this Court. Petitioners do not claim that there has been either a procedural or a substantive failure to comply with the contractual method of dispute resolution. To the contrary, Petitioners have abandoned the agreed-upon adjustment mechanism in favor of renewing their complaint in a different forum. Petitioners seek to ignore the fact that the resolution process ran its course when the membership declined to exercise its strike option. Section 301 was not enacted to provide the parties with an alternative method of dispute resolution. Its purpose was to insure that the parties abide by their promised means of adjustment.

Accordingly, rather than directing aggrieved parties to file suit, Congress declared in § 203(d) of the LMRA that the bargained-for grievance procedure is the preferred method of settlement. Judicial deference to the bargained-for grievance procedure in cases which followed enactment of the LMRA illustrates that the Court has followed Congress' mandate that the dispute resolution mechanism chosen by the parties is intended to be

the exclusive means of dispute resolution. In the *Steelworkers Trilogy*, this Court conclusively held that the national labor policy, embodied in § 203(d), could be effectuated only if the means chosen by the parties for settlement of their differences under the collective bargaining agreement was given full play.[5] This holding is now commonly referred to as the "finality rule."

In *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), the second case in the trilogy, the Court observed that "a collective bargaining agreement is an effort to erect a system of industrial self-government." *Id.* at 580. At the heart of this system of industrial self-government was the grievance machinery provided for in the collective bargaining agreement. "The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *Id.* at 581.

The finality rule was further strengthened in *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653-54 (1965), where this Court stated:

> Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the "common law" of the plant. . . . A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition

[5] *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

> to cutting across the interest already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95 (1962).[6]

The Court in *Vaca v. Sipes*, 386 U.S. 171 (1967), recognized two exceptions to the finality rule. First, an individual can bring an action for breach of a collective bargaining agreement against his employer, provided the employee can prove that the union breached its duty of fair representation in the handling of the grievance. 386 U.S. at 186. Absent proof that the union's processing of the employee's grievance was arbitrary, discriminatory or in bad faith, the employee may not proceed against the employer under § 301. *See also Chauffeurs, Teamsters and Helpers Local 391 v. Terry*, 494 U.S. ___, 108 L.Ed.2d 519, 527 (1990); *DelCostello v. Teamsters*, 462 U.S. 151, 163-64 (1983). Petitioners herein do not allege their union

[6] *See also Clayton v. Automobile Workers*, 451 U.S. 679, 687 (1981), wherein this Court stated:

> The rule established by *Republic Steel [v. Maddox]* was thus intended to protect the integrity of the collective-bargaining process and to further that aspect of national labor policy that encourages private rather than judicial resolution of disputes arising over the interpretation and application of collective-bargaining agreements.

breached any such duty and, in fact, have joined their union as a co-Plaintiff.

Second, *Vaca* held that an exception to the finality rule occurs when the grievance procedure has been repudiated by the employer. 386 U.S. at 185. This exception, likewise, does not apply in this case, since Petitioners have never disputed that the grievance procedure was properly followed to its conclusion. Absent one of the exceptions set forth in *Vaca*, the finality rule precludes an employee's resort to the courts and binds the employee to the method of adjustment set forth in the collective bargaining agreement. Petitioners' attempt to go beyond *Vaca* and create a third exception to the finality rule should be rejected by this Court. To permit individuals access to the courts under these circumstances would undercut the grievance procedure and overburden the courts with a flood of cases.[7]

In *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), the Supreme Court again held that pursuant to congressional mandate, parties must be left to settle their differences under a collective bargaining agreement by the means they had chosen. *Id.* at 562.

Petitioners rely upon the Seventh Circuit opinion in *Associated General Contractors of Illinois v. Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), for the proposition that absent unequivocal language that the dispute resolution mechanism contained in a collective bargaining agreement is intended to be the exclusive and

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[7] See D.E. Feller, "A General Theory of the Collective Bargaining Agreement," 61 *Calif. L. Rev.*, 663, 853 (1973).

final remedy, parties may seek judicial resolution of the underlying grievance. However, judicial interpretation of the LMRA as it has evolved in the United States Supreme Court demonstrates the opposite to be true. This Court has made clear that the means chosen by the parties for adjustment of the dispute are the exclusive, final and binding remedies of the parties unless the collective bargaining agreement explicitly says they are not. In *Republic Steel v. Maddox, supra,* the Court stated: "the federal [finality] rule would not of course preclude Maddox' court suit if the parties to the collective bargaining agreement *expressly agreed that arbitration was not the exclusive remedy.*" 379 U.S. at 657-58 (emphasis added). Thus, rather than holding that the dispute resolution process in a collective bargaining agreement is *not* the exclusive remedy in a collective bargaining agreement unless the agreement specifically says it *is*, the *Maddox* court held that the dispute resolution process *is* exclusive unless the parties expressly agree that it is *not*.

In *Maddox*, the collective bargaining agreement stated that an employee "may discuss" a complaint with his foreman. The Court observed:

> Use of the permissive "may" does not of itself reveal a clear understanding between the contracting parties that individual employees, unlike either the union or the employer, are free to avoid the contract procedure and its time limitations in favor of a judicial suit. *Any doubts must be resolved against such an interpretation.*

Id. at 658-59 (Emphasis added).

Applying the rationale of *Maddox* to the facts of this case, any doubts about whether the parties intended the

means of dispute resolution set forth in the collective bargaining agreement to be final should be resolved against an interpretation which would permit the parties to avoid the contract procedure in favor of a judicial suit.

The very nature of the collective bargaining process compels the conclusion that the parties intended for the dispute resolution mechanism set forth in the collective bargaining agreement to be the final, binding and exclusive remedy of the parties. The collective bargaining agreements in this case were arrived at through arms-length negotiation with the UAW, a powerful and sophisticated bargaining representative which was at no disadvantage during the bargaining process. The UAW bargained for and agreed to the strike/lock-out option as the final means of achieving dispute resolution if the steps in the grievance procedure failed to resolve the matter. Respondent urges this Court to hold the parties to their contract pursuant to the word and spirit of the national labor policy. To do otherwise would be contrary to the very reason the LMRA was enacted – to make unions, as well as employers, responsible for the contracts they negotiated.

Further, the nature of the employment relationship in the absence of a collective bargaining agreement compels the conclusion that the parties intended the dispute resolution mechanism set forth in the collective bargaining agreement to be the final, binding and exclusive remedy of the parties. Under traditional common law principles, employment is terminable at the will of either the employee or the employer. *See Bowen v. United States Postal Service*, 459 U.S. 212, 224 (1983); *Toussaint v. Blue Cross and Blue Shield of Michigan*, 408 Mich. 578, 292

N.W.2d 880 (1980). In *Bowen*, this Court observed that a collective bargaining agreement creates rights exceeding the traditional common law employment terminable at-will. Rather, it is an agreement creating relationships and interests under the federal labor policy. 459 U.S. at 224-25.

Typically, in entering into a collective bargaining agreement, the company relinquishes its right to terminate at-will and agrees to be bound by a just cause standard. The individual employees give up their right to negotiate independently with the employer and agree to be bound by the agreements negotiated by their chosen bargaining representative. The collective bargaining system as encouraged by Congress of necessity subordinates the interests of the individual employees to the collective interests of all employees in a bargaining unit. *Vaca v. Sipes*, 386 U.S. 171, 182 (1967), citing *J.I. Case Co. v. NLRB*, 321 U.S. 332 (1944). The substantive rules embodied in a collective bargaining agreement are the product of consensual arrangement.[8]

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[8] In "A General Theory of the Collective Bargaining Agreement," Professor Feller states:

> American Industrial Society relies to an extraordinary degree on the voluntarily developed systems of law embodied in collective agreements to provide the protections for employees which are provided in other societies by public law. There are enormous advantages to such a system. Public laws can provide certain elementary protections, such as the right to be free from discharge except for just cause, but complex systems of seniority, of rules governing scheduling and allocation of overtime, of job evaluation and classification, and the myriad other matters

(Continued on following page)

The parties in this case bargained for and agreed to a mechanism to resolve disputes, including whether the Company had "just cause" to terminate an employee. This bargained-for mechanism permitted the aggrieved party to exercise the option to strike or lock-out. The Court must consider whether an employer would give up the right to discharge at-will and agree to be bound by a just cause standard if it did not intend that the dispute

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(Continued from previous page)

> which are made subject to a rule of law in the modern American collective agreement cannot be imposed by broadly applicable public law. They must be developed in light of the particular needs and circumstances of individual industries, companies and even plants or departments.
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> Under our system, there is no mandate that such rules be contained in collective agreements. The parties must agree. Their willingness to do so is, I believe, dependent in large measure on their ability to establish their own adjudicative machinery, with its own remedial limitations. The specification of a rule in a collective agreement is always subject to the hazard that its application in unforeseen circumstances or its interpretation in unforeseen ways will bring unintended consequences. That hazard is limited to the extent that the parties themselves control the procedure in which disputed questions of interpretation and application are determined and the remedies which can be provided. *I believe, in short, that the existence of the very rules upon which many individual claims are based is itself dependent upon the absence of an individual right to obtain adjudication of claims of their violation in a forum foreign to the system.*

D.E. Feller, "A General Theory of the Collective Bargaining Agreement," 61 *Calif. L. Rev.*, 663, 853-54 (emphasis added).

resolution mechanism set forth in a collective bargaining agreement would be the final, binding and exclusive remedy of the individual employees.

Petitioners' argument that they should be permitted to begin their claim anew in federal court would be plausible *if* no dispute resolution mechanism was provided in the agreement. If this were the case, Petitioners may argue that they were left without a remedy. But this is *not* the agreement in this case. In this case, the parties negotiated a dispute resolution process and even went so far as to include that the Union would be released from its no-strike pledge. This was irrefutably the adjustment method agreed upon by the parties. Respondent urges the Court to hold that this adjustment method is the final, binding and exclusive remedy of the parties.

(2) An Option to Exercise a Strike/Lock-Out Clause is a Proper Method by Which to Reach Final Adjustment of Disputes.

Alternatively, Petitioners argue they should be permitted to start over in federal court because Congress did not intend that the option to exercise a strike/lock-out clause could be a method by which to reach final adjustment of disputes. Petitioners' contention, however, is contrary to the national labor policy, embodied in the LMRA, that parties should be responsible for the contracts they make. It is certainly anomalous for Petitioners to claim that the very method they negotiated for adjustment of disputes cannot now be considered an acceptable method of adjustment.

Petitioners' assertion that resort to economic weapons is an improper method of achieving dispute resolution is belied by the labor/management history which has evolved. As observed by this Court in *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 409 (1976), "there is no general federal anti-strike policy." Quite the contrary, the right to strike is included in the rights of employees to engage in concerted activities guaranteed by Section 7, 29 U.S.C. § 157, and protected from employer interference by Section 8(a)(1), 29 U.S.C. § 158(a)(1) of the amended National Labor Relations Act. *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 233 (1963). This Court observed in *Erie Resistor* that "[t]his repeated solicitude for the right to strike is predicated upon the conclusion that a strike when legitimately employed is an economic weapon which in great measure implements and supports the principles of the collective bargaining system." *Id.* at 233-34.

The Court went on to say:

> While Congress has from time to time revamped and redirected national labor policy, its concern for the integrity of the strike weapon has remained constant. Thus when Congress chose to qualify the use of the strike, it did so by prescribing the limits and conditions of the abridgment in exacting detail, e.g., §§ 8(b)(4), 8(d), by indicating the precise procedures to be followed in effecting the interference, e.g., § 10(j), (k), (l); §§ 206-210, Labor Management Relations Act, and by preserving the positive command of § 13 that the right to strike is to be given a generous interpretation within the scope of the labor Act. The courts have likewise repeatedly recognized and effectuated the

> strong interest of federal labor policy in the legitimate use of the strike. (Citations omitted).

Id. at 234-35.

This Court has recognized the legitimacy of both economic strikes and strikes to protest unfair labor practices. *Belknap, Inc. v. Hale*, 463 U.S. 491, 493 (1983). Further, the Court in *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 181 (1967), recognized that "[t]he economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms . . . ."

The UAW itself has always been a staunch supporter of the right to strike. *See International Union, UAW v. Wisconsin Employment Relations Board*, 336 U.S. 245 (1949); *Baker v. General Motors Corp.*, 478 U.S. 621 (1986). The UAW's commitment to preserving the right to strike extends to imposing fines upon its members who do not participate in the strike. *NLRB v. Allis-Chalmers Mfg. Co., supra*. The fact that the UAW now shifts gears and argues that strikes are not a proper method of adjustment for resolution of grievance disputes under § 203(d) is without support. In fact, this Court acknowledged in *United Steelworkers v. Warrior & Gulf, supra*, that a collective bargaining agreement containing a waiver of a no-strike pledge is one of the options to which the parties may agree. 363 U.S. 574, 578 (1960).[9]

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[9] Footnote 5 states: Contracts which ban strikes often provide for lifting the ban under certain conditions. Unconditional pledges against strikes are, however, somewhat more frequent than conditional ones. Where conditions are attached to no-strike pledges, one or both of two approaches may be used:

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Concededly, the majority of cases which have come before the Court on this issue have involved an arbitration clause, since many collective bargaining agreements designate arbitration as the final step in the grievance procedure. However, nothing in the legislative history of the LMRA, nor the cases which followed the Act, require that the grievance procedure result in binding arbitration before the courts will give full play to the means chosen by the parties for resolution of their disputes. In fact, the legislative history of the LMRA reveals that Congress refused to require compulsory arbitration for grievance disputes, on the ground that it was not desirable for the federal government to dictate the particular methods for settling such disputes.[10]

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certain subjects may be exempted from the scope of the pledge, or the pledge may be lifted after certain procedures are followed by the union. (Similar qualifications may be made in pledges against lockouts).

Most frequent conditions for lifting no-strike pledges are: (1) The occurrence of a deadlock in wage reopening negotiations; and (2) violation of the contract, especially non-compliance with the grievance procedure and failure to abide by an arbitration award.

No-strike pledges may also be lifted after compliance with specified procedures. *Some contracts permit the union to strike after the grievance procedure has been exhausted without a settlement, and where arbitration is not prescribed as the final recourse.* Other contracts permit a strike if mediation efforts fail, or after a specified cooling-off period. Collective Bargaining, Negotiations and Contracts, Bureau of National Affairs, Inc., 77:101. 363 U.S. at 578, n.5. (Emphasis added).

[10] II NLRB, *Legislative History of the Labor-Management Relations Act*, 1947, pp. 434-35, 1520. *See also Sinclair Refining*

(Continued on following page)

In *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 218-19 (1979), this Court observed:

> In the 1947 Taft-Hartley Act Congress sought to promote numerous policies. One policy of particular importance – if not the overriding one – was the policy of free collective bargaining . . . . It follows that the parties' agreement primarily determines their relationship . . . . [T]hough [a] policy in favor of arbitration may color interpretation of [the] contract, it cannot impose an agreement to arbitrate where the parties have agreed not to arbitrate . . . . If the parties' agreement specifically resolves a particular issue, the courts cannot substitute a different resolution. (Citations omitted).

The principles set forth in the *Steelworkers Trilogy* do not rest upon any national policy favoring arbitration or upon the presumed expertise of arbitrators, but rather are grounded upon the statutory provision favoring settlement of disputes by the method agreed upon by the parties. It is not arbitration, per se, that is required under the national labor policy. Rather, it is that the parties be bound by whatever means they have chosen through collective bargaining for the resolution of their grievances.

In analyzing the national labor policy, the United States Court of Appeals for the Fifth Circuit in *Haynes v.*

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Co. v. Atkinson, 370 U.S. 195, 211-12 (1962), wherein this Court stated: "And certainly no one could contend that § 301 was intended to set up any such system of 'compulsory arbitration' as the exclusive method for settling grievances under the Taft-Hartley Act."

United States Pipe & Foundry Company, 362 F.2d 414, 416 (5th Cir. 1966), observed:

> Subsequent to *Lincoln Mills*, this policy of giving full play to the means chosen the parties for resolving disputes has been given further shape in various Supreme Court opinions. Of the three available forums for the resolution of disputes – contractual grievance procedures such as arbitration, or the court, or the picket line – the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement . . . . The court has opened the doors of the courthouse only when the parties have chosen this forum over the others. (Citations omitted.)

In "A General Theory of the Collective Bargaining Agreement," Professor David Feller[11] sets forth why it is imperative that courts give full play to the means of dispute resolution chosen by the parties, even if the means chosen is the option to strike. Feller states:

> By specifying that the grievance procedure terminates in the right to strike rather than adjudication before an arbitrator, the parties have clearly indicated that they do not want these issues adjudicated by anyone. The parties regard the issues as so vital, and the standards incorporated in their agreement so uncertain of application, as to require that resolution of disputes on the specified subjects remain open for

[11] David E. Feller is a Professor of Law at the University of California, Berkeley. Before assuming this position, he was a union attorney for nearly 20 years and served as General Counsel for the United Steelworkers and the Industrial Union Department of the AFL-CIO. Feller, 61 *Calif. L. Rev.*, 663, 856, n. 718.

> the same kind of negotiation that takes place in the formation of an agreement. There seems to be no policy justification for imposing upon them adjudication by the courts.
>
> * * *
>
> On principle, the preferred view would be to honor the intentions of the parties in the absence of a clearer showing than now exists that federal labor policy requires that arbitration be imposed, directly or indirectly, where it has not been agreed upon. Section 301 was, after all, enacted on the thesis that the parties should be required to honor their agreements. *Where the parties have agreed, for whatever reason, that the ultimate recourse shall be a test of economic strength during the term of an agreement as well as at the periodic intervals when the agreement is open for negotiation, it should require a clear showing that Congress intended to overrule that intention before a system of impartial adjudication, either judicial or arbitral, is imposed on parties who have shown that they do not desire it.*

Feller, 61 *Calif. L. Rev.*, 663, 846-47 (emphasis added).

Petitioners argue that strikes are not a preferred method for resolving grievances. Whether strikes are preferred, however, is not the issue before this Court. Section 203(d) declares that "[f]inal adjustment by a method agreed upon by the parties is the desirable method for settlement of grievance disputes." Petitioners claim that nothing in § 203(d) "goes further and bespeaks a preference for strikes and lock-outs over judicial enforcement of labor contracts." In fact, § 203(d) does not express a preference for judicial enforcement *at all*. The only preference expressed in § 203(d) is that the matter be resolved according to the means chosen by the parties. It would

defeat the purpose of § 203(d) if either Congress or the Court imposed its preferred method of dispute resolution upon the parties.

Further, Petitioners claim that a collective bargaining agreement which permits the parties to exercise a strike/lock-out option is irreconcilable with the policy underlying § 301(a) to promote industrial peace. The policy underiying § 301(a), however, is to make collective bargaining agreements binding and enforceable against both parties. It was Congress' belief that industrial peace would be achieved if this policy were effectuated.[12] Nowhere in the legislative history of the LMRA is there support for Petitioners' assertion that a bargained-for dispute resolution process culminating in a strike or lock-out is destructive of industrial peace. In terms of negotiated agreements, the national labor policy is embodied in § 203(d) rather than § 301.

As displayed in § 208 of the LMRA, Congress was not hesitant to prohibit strikes when a strike would imperil national health or safety.[13] If Congress intended to

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[12] S. Rep. No. 105, p. 17 summed up the philosophy of § 301 that: "statutory recognition of the collective agreement as a valid, binding and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements and will thereby promote industrial peace."

[13] LMRA § 208, 29 U.S.C. § 178, provides:

(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the

(Continued on following page)

preclude an option to strike or lock-out as a means of reaching final adjustment, it certainly could have so provided. Instead, Congress protected the right to strike.[14] Further, Congress specifically refused to designate which dispute resolution means were acceptable and which were not, stating that this was a choice best left to the parties to the agreement.[15]

Petitioners offer no support for their position that the term "adjustment" as used in § 203(d) "simply does not encompass results brought about by resort to economic weapons." Petitioners merely quote portions of the

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parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out –

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of sections 101 and 115 of this title shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 346 and 347 of title 28.

[14] 28 U.S.C. § 158(a)(1).

[15] See footnote 10.

LMRA and then provide their own interpretation of the word. Petitioners are unable to cite any case law or legislative history which supports their interpretation of the term "adjustment."

This Court in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962), held that in interpreting and applying federal statutes, the Supreme Court has no power to change deliberate choices of legislative policy made by Congress within its constitutional powers. Rather, where Congress' intent is discernible, the Court must give effect to that intent. Congress' intent that the means chosen by the parties is the desirable method for resolution of disputes is clear in the legislative history of the LMRA.

In *DelCostello v. Teamsters*, 462 U.S. 151, 163 (1983), this Court, citing *Teamsters v. Lucas Flour*, 369 U.S. 95, 103 (1962), observed that the consensual processes which federal labor law is chiefly designed to promote are the formation of the collective agreement and the private settlement of disputes under it. The presence of such a clearly-stated legislative intent and judicial application of that intent leaves no room for Petitioners to theorize on the meaning of the word "adjustment." Petitioners' argument that an option to exercise a strike/lock-out clause cannot be a method of reaching final adjustment of disputes is without support.

CONCLUSION

For the foregoing reasons, the Judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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No. 89-1166

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

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Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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REPLY BRIEF FOR THE PETITIONERS

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REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

I. A. Both Respondent, Ring Screw Works, Ferndale Fastener Division, and the Chamber of Commerce begin by assuming the point to be proved: both take it as a given that in negotiating their collective bargaining agreements the parties here had reached a meeting of the minds—which was then embodied in their contracts—that the use of economic force would be the exclusive means of resolving contract disputes. Thus, Respondent and the Chamber repeatedly characterize the use of economic force as the parties "ultimate recourse" (Res. Br. 7), the "only recourse" (Chamber Br. 3), and the "final means of achieving dispute resolution" (Res. Br. 16); indeed, Respondent states that the Union's determi-

nation not to strike "finaliz[ed manangement's] denial of the grievance" (Res. Br. 6).

The problem is that these assertions are contrary to fact. As the Sixth Circuit held, the collective bargaining agreements here "do[] not expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration." (Pet. App. 8a.) No matter how much the Respondent wishes it were otherwise, these collective bargaining agreements simply do *not* state that where there is a contract dispute, the strike is the Union's "only recourse" or that the Company's denial of the grievance becomes "final" if the Union determines not to strike. Nor is there any background evidence demonstrating that the parties meant the contracts to be so read.

That being so, the collective bargaining agreements here can fairly be interpreted as the Respondent and the Chamber would interpret those contracts if—and *only if*—the law in this regard is (i) that a contract that *permits* economic force and is silent on judicial enforcement embodies an *implied* "exclusivity" provision; and (ii) on the basis of such an interpretive rule, that the parties to such a contract are to be taken to have intended economic force to be the "only recourse" where there is a contract dispute. That, of course, is a conclusory—and, as we demonstrated in our opening brief, an erroneous—way of answering the legal question presented by the *certiorari* petition (Pet. i) which Respondent and the Chamber otherwise so studiously ignore.

B. By assuming away the question presented, Respondent and the Chamber are able to proceed by arguing that Respondent should prevail on the theory that where a collective bargaining agreement *does* establish an *exclusive* non-judicial mechanism for resolving contract disputes, the parties will normally be required to resolve such disputes through that exclusive procedure. Thus, Respondent characterizes the present suit as an attempt by the Union, "dissatisfied with the results of the bargained-for grievance procedure" (Res. Br. 11), to "disregard the exclusivity" of that procedure (Res. Br. 10).

To be sure, where the parties to a collective bargaining agreement do provide that a non-judicial contract dispute procedure is to be exclusive, that procedure may not be disregarded by a party dissatisfied with its results. But Respondent's insistence on that commonplace has absolutely no relevance for the question presented here: whether the parties to *these* contracts created an exclusive contract dispute procedure by permitting—but not requiring—the Union to strike and the Company to lockout over unresolved grievances and remaining silent about the alternative of judicial enforcement. And, as we demonstrated in our opening brief, the policy of promoting labor peace by making labor contracts binding and enforceable through the usual processes of the law that animates § 301 of the Labor Management Relations Act plainly requires that such a contract be read as providing only for economic force only if that is the only possible reading. (Petitioners' Brief, pp. 9-12.) As the Seventh Circuit stated in the leading court of appeals case:

> [I]t is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agreement to divest the courts of jurisdiction. . . . There is no plain language in the contract compelling parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than this. [*Associated General Contr. of Ill. v. Illinois Conf. of Teamsters*, 486 F.2d 972, 976 (7th Cir. 1973).]

C. Respondent points out that "[i]n enacting § 301, Congress expressed its belief that industrial peace could

be achieved only if the parties were held to the terms of the agreements into which they entered." (Res. Br. 8-9.) So far so good. Respondent, as well as the Chamber and the Motor Vehicle Manufacturers Association (MVMA), then seek to draw from that statement the conclusion that the purpose of § 301 is limited to "insur-[ing] that the parties abide by their promised means of [non-judicial] adjustment." (Res. Br. 11.) This is a patent non-sequitur.[1]

It is well-settled that § 301 is *not* limited to enforcing the parties' obligations with respect to their "promised means of [non-judicial] adjustment." Instead, § 301 is plainly intended to make enforceable *all* of the promises contained in a collective bargaining agreement and to embody the "strong policy favoring judicial enforcement of collective bargaining contracts." *Hines v. Anchor Motor Freight*, 424 U.S. 554, 562 (1976). When a labor contract does not provide for an exclusive, peaceful non-judicial method of resolving contract disputes, this Court has therefore been quick to provide direct judicial enforcement of the contract's substantive provisions as required by § 301. *Smith v. Evening News*, 371 U.S. 195 (1962); *Atkinson v. Sinclair Rfg. Co.*, 370 U.S. 238 (1962).

D. Respondent seeks to attribute to us the argument that strikes are an "improper method of achieving dispute resolution" and then spends several pages of its brief "responding" to that argument. (Res. Br. 20.) We make no such argument. Rather, we argue that—because of the language and policies of § 301—a bare provision in a collective bargaining agreement preserving the strike option should *not* be regarded as evidence of an intent to foreclose the judicial enforcement of labor contracts provided for in § 301.

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[1] As shown in point I.A. above, Respondent's argument, moreover, rests on the contrary-to-fact assumption that the parties here agreed that economic force would be the exclusive means of resolving contract disputes.

We argue, in other words, that because of the important federal policy favoring labor peace during the term of a collective bargaining agreement, and because strikes and lockouts do not resolve contract interpretation disputes by reference to the language and meaning of the contract, the presence of the strike option should not be regarded as the parties' chosen *exclusive* method for resolving such disputes *in the absence of explicit contract language to that effect.* (*See* Pet. Br. 8-9.)[2]

E. Respondent relies on a single sentence from *Republic Steel v. Maddox*, 379 U.S. 650 (1965) for the proposition that "the *Maddox* court held that the dispute resolution process *is* exclusive unless the parties expressly agree that it is *not*." (Res. Br. 15, emphasis added.) The collective bargaining agreement in *Maddox* provided for the final and binding arbitration of contract grievances and the *Maddox* Court held that *such a provision* creates the exclusive method of settling contract disputes. 379 U.S. at 651-653. Against that background, the sentence in question states, "The federal rule would not of course preclude Maddox' court suit if the parties to the collective bargaining agreement expressly agreed that arbitration was not the exclusive remedy." *Id.* at 657-658.

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[2] We also demonstrated in our opening brief that LMRA § 203(d) is not intended to override § 301 but rather to reinforce the latter's preference for the peaceful settlement of contract disputes. (Pet. Br. 12-15.) In reply, Respondent argues that "[i]n terms of negotiated agreements, the national labor policy is embodied in § 203(d) *rather than* § 301." (Rep. Br. 26, emphasis added.)

Nothing in the LMRA's language or in its legislative history justifies that attempt to denigrate the central place of § 301 in the national labor policy. And Respondent offers no reply to our showing that both the statutory language—particularly the use of the term "adjustment"—and the general rule that a statute should be read as an integral whole make it plain that § 203(d) is *not* to be read as stating any preference for the use of economic force during contract disputes.

Not surprisingly given the context, neither that nor any other sentence of the *Maddox* opinion addresses—much less decides—a situation such as the one here where the collective bargaining agreement does *not* state any "express agreement" that either arbitration—or economic force—is the "exclusive remedy" for contract disputes. Instead, *Maddox* establishes two simple rules: if the parties state that a private contract dispute settlement procedure is exclusive, it is; and if they say it is not, it is not. Contrary to Respondent's claim, *Maddox* does not deal even in passing with the rules that apply where the contract is silent in this regard.[3]

F. Starting from their misreading of *Maddox*, Respondent, as well as the MVMA, assert that the question here is whether to create an "exception" to the "usual rules" that grievance procedures should be regarded as exclusive whether or not the parties expressly so state. (*See* Res. Br. 14; MVMA Br. 5.) This is to reverse the rule and the exception. As *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 454 (1957), holds, § 301's general rule is that "the collective agreement" is to be recognized as a "valid, binding and enforceable contract."

To the extent there is an "exception", then, it is the judicially-created exception that—when the parties agree that the meaning of their labor contract will be determined, not by the judiciary, but instead by a private decision-maker—their agreement will be honored and the courts will decline to substitute their judgment for that

[3] As we have demonstrated, § 301's goal of promoting labor peace through binding and enforceable labor contracts is not served by construing a contract which is less than clear as one that makes the use of economic force the exclusive means for resolving a contract dispute. (Pet. Br. 8-15). In contrast, a labor contract, such as the one at issue in *Maddox*, providing for binding decisions on the merits of contract disputes by a private decision-maker, *does* serve those policies. It may therefore be perfectly sound in that context to take contractual silence on the availability of a judicial forum as manifesting an intent to make the private forum exclusive.

of the appointed decision-maker. That being so, the instant case can fairly be said to turn on whether that exception to § 301's general rule of judicial enforcement of collective bargaining agreements will be extended to preclude resort to court when the parties do *not* appoint a private decision-maker to review the merits of their contract disputes but instead permit the use of economic force and are silent regarding the availability of judicial enforcement. For all the reasons stated in our opening brief we submit that the correct answer to that question is "no".

II. A. The MVMA's *amicus curiae* brief, unlike Respondent's brief, is not content to pretend that the collective bargaining agreements here state that strikes and lockouts are the exclusive method of resolving contract disputes. Instead, the MVMA spends the bulk of its brief discussing another kind of collective bargaining agreement: *viz.*, contracts that contain a standard form "final and binding" arbitration clause while specifically excluding a limited number of issues from its reach and that do not specify whether those excluded disputes are subject to resolution *solely* through economic force. (MVMA Br. 10-18.) According to the MVMA, when the parties provide for arbitration and then "carve out" one or more issues from the reach of the arbitration clause, the appropriate conclusion to draw is that the parties believed that the *issues so excluded from arbitration* are either "too subtle" or "so delicate" to be entrusted to any adjudicative body, and that disputes over those issues are not to be settled by the courts. (MVMA Br. 17.)

This argument may have some force in the context of collective bargaining agreements such as those described by MVMA. But whatever force the argument may have in that context comes from the very difference between those contracts and the contracts at issue here, *viz.*, the fact that some "subtle" or "delicate" contract issues *were* treated specially and the inference that may fairly

be drawn from that special treatment. The collective bargaining agreements here are not of that kind and do not provide a basis for drawing any such inference.[4]

Instead—as to both their "subtle" and the not-so-subtle provisions—the collective bargaining agreements at issue here reserve the right to strike and are silent on judicial enforcement. It simply makes no sense to infer from such a contract that the parties made a considered choice *not* to entrust issues as basic and as readily-determinable as wage rates, vacation eligibility and application of the "just cause" clause to any adjudicative body. To do so would relegate *all* of the substantive provisions of the contract to determination on the basis of the relative economic strength of the parties rather than on the basis of the language and meaning of the contract.[5]

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[4] Contrary to the impression left by Respondent and the MVMA, Professor Feller's *A General Theory of the Collective Bargaining Agreement*, 61 Calif.L.Rev. 663, 849 (1973), carefully distinguishes in this respect between labor contracts that have exceptions to a mandatory arbitration provision and contracts that have no mandatory arbitration provision at all. Professor Feller, in fact, acknowledges that the most appropriate result may be "to adopt different solutions for the different types of agreements." (*Id.* at 849.) Under this "possible answer" (*id.*), if an agreement "does not provide for arbitration at all, or provides it only for a narrow class of cases, thus providing no system for internal adjudication of ascertainable standards . . . a judicial remedy would be provided after the grievance procedure has been exhausted" (*id.* at 850).

[5] MVMA also invokes the possibility that under our approach a probationary employee could bring a lawsuit challenging his or her discharge even though such a discharge is not subject to the grievance procedure. (MVMA Br. 10.) But, probationary employees do not have the substantive contractual protection from unjust discharge enjoyed by regular employees; that is the meaning of being "probationary". That being so, the validity of such a claim has nothing to do with which means of resolving a dispute—arbitral, judicial or economic recourse—is available. The point is that probationary employees have no substantive right to enforce in *any* such forum.

B. Respondent and the MVMA place great reliance on the law review article just noted: Feller, *A General Theory of the Collective Bargaining Agreement*, *supra*. That is a tacit admission of how firmly the well-settled § 301 law as declared by this Court stands against their position. While Professor Feller has essayed a bold and fascinating methodology for elaborating § 301, his methodology is at war with this Court's methodology.

For example, Professor Feller's "Proposition 1" advances the thesis that the "collective agreement is not a contract between the employer and any employee and neither may bring suit against the other for its breach." 61 Calif.L.Rev. at 774. As Professor Feller admits, that proposition is contrary to the holdings of *Smith v. Evening News*, *supra*, and *Humphrey v. Moore*, 375 U.S. 335 (1964). 61 Calif.L.Rev. at 843-845. And Professor Feller's "Proposition 2" is that "the contractual obligations assumed by the employer are limited to those enforceable through the grievance procedure." *Id.* at 792. That proposition is contrary to *Smith v. Evening News*, *supra*, and *Atkinson v. Sinclair Rfg. Co.*, *supra*.[6]

In sum, Respondent and the MVMA would have it that in the interest of ruling that the collective bargaining agreements here are *not* judicially enforceable, this Court should rewrite its basic § 301 jurisprudence from *Textile*

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[6] Not only do Professor Feller's theories require a complete departure from established precedent, his conclusions regarding the type of labor contract at issue here also rest on the naked assumption that the parties "implicitly" intended to foreclose judicial relief. 61 Calif. L. Rev. at 843. Professor Feller cites no supporting empirical evidence for this assumption and there is no reason to believe that his long and distinguished service with the United Steelworkers of America afforded him any particular expertise on the question of whether parties to the type of labor contract at issue "implicitly" intended to negate judicial enforcement. Not a single reported case involving such a contract involves the Steelworkers Union and it may therefore be fairly assumed that the Steelworkers, for whatever reason, have not entered into such agreements with any regularity.

Workers v. Lincoln Mills, supra, to date. We suggest that this modest proposal serves only to betray the weakness of their legal position.

C. Both the MVMA and the Chamber recite various statistics designed to suggest that allowing judicial enforcement of the type of labor contract at issue here would cause a flood of litigation. That suggestion is baseless.

Two circuits have held that contracts of this type may be enforced in court and neither the MVMA nor the Chamber point to any increase of contract enforcement litigation in those circuits. *See Associated General Contr. of Ill. v. Illinois Conf. of Teamsters, supra*; *Dickeson v. DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987).[7]

Not surprisingly, then, the statistics used are overinclusive in several fundamental ways. The Chamber, for example, recites that there were 13,328 suits filed "under federal labor laws" in 1989. (Chamber Br. 10 n.18.) What the Chamber fails to point out is that this figure includes several categories of "labor litigation" having nothing to do with the enforcement of labor contracts.[8]

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[7] In the 17 years since the Seventh Circuit decided *Associated General Contr. of Ill. v. Illinois Conf. of Teamsters, supra,* there have been only two reported court of appeals decisions raising the question presented here and not a single reported district court opinion in the 3 states that circuit court covers. *S. J. Groves & Sons v. Teamsters,* 581 F.2d 1241 (7th Cir. 1978) and *Huffman v. Westinghouse,* 752 F.2d 1221 (7th Cir. 1985). In the three years since the Ninth Circuit decided *Dickeson,* there is not a single reported decision in the 9 states that circuit court covers.

[8] That figure includes suits under the Fair Labor Standards Act, Railway Labor Act, Landrum-Griffin Act and a category called "other labor litigation" (presumably including ERISA, OSHA, etc.). Indeed, the number of cases brought under the Labor Management Relations Act (which includes § 301) has declined by nearly 30% since 1986. *Report of the Administration Office of the U.S. Courts on Civil Cases Commenced by Nature of Suit,* Table C-2A (1989).

The statistic recited by the MVMA are misleading because those figures lump together labor contracts which exclude only a few items from arbitration and those which —like the contracts at issue here—contain no arbitral mechanism at all. For example, the MVMA notes that, according to one sample, 31% of labor contracts *either* do not provide for arbitration or limit the reach of the arbitration clause in some respect. (MVMA Br. 11.) In arguing that contract enforcement here may lead to "thousands" of potential § 301 suits, the MVMA, however, admits that it cannot be determined how many grievances are filed under labor contracts such as those at issue here and how many under contracts which exclude only certain issues from arbitration. (MVMA Br. 22.)

CONCLUSION

For the reasons stated in the Petitioners' opening brief and in this reply brief, the judgment of the Court of Appeals should be reversed.

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QUESTION PRESENTED

Whether an aggrieved employee can sue his employer for wrongful discharge under § 301 of the Labor Management Relations Act of 1947 when the employee has agreed to resolve disputes through a multi-step grievance procedure set forth in a collective bargaining agreement between his union and the employer.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 89-1166

ARTHUR GROVES, BOBBY J. EVANS and LOCAL 771, INTERNATIONAL UNION, UAW,
Petitioners,

v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE RESPONDENT

INTEREST OF THE AMICUS CURIAE [1]

The Chamber of Commerce of the United States of America ("the Chamber") is the largest federation of

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[1] This brief is being filed with the consent of the parties, pursuant to Supreme Court Rule 37.3. The consent letters have been filed with the Clerk of the Court.

business companies and associations in the world. With substantial membership in each of the 50 states, the Chamber represents nearly 180,000 businesses and organizations and serves as the principal voice of the American business community. An important function of the Chamber is to represent the interests of its member employers in important labor relations matters before this Court, the lower courts, the United States Congress, the Executive Branch and independent regulatory agencies of the federal government. Such representation constitutes a significant aspect of the Chamber's activities. Accordingly, the Chamber has sought to advance those interests by filing briefs in a wide spectrum of labor relations litigation.[2]

The question presented by the instant case—whether an aggrieved employee and his union can circumvent the final and binding methods for settling disputes set forth in the collective bargaining agreement and sue in federal court under § 301 of the Labor Management Relations Act of 1947—is of great concern to all Chamber member employers that are parties to collective bargaining agreements. The very large number of employer members that are subject to collective bargaining agreements puts the Chamber in the position to provide the Court with a more complete understanding of why national labor policy will be undermined unless the method for resolving disputes contained in a collective bargaining agreement is considered the final, binding and exclusive remedy for parties whether or not the agreement so explicitly states.

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[2] E.g., *Trans World Airlines, Inc.* v. *Independent Federation of Flight Attendants*, 109 S.Ct. 1225 (1989); *Laborers Health and Welfare Trust Fund* v. *Advanced Lightweight Concrete Co., Inc.*, 484 U.S. 539 (1988); *Pattern Makers League* v. *NLRB*, 473 U.S. 95 (1985).

STATEMENT OF THE CASE

This case centers on a dispute between Petitioners, Arthur Groves and Bobbie J. Evans, concerning the terms and conditions of their collective bargaining agreements. Both were hourly employees at divisions of Respondent, Ring Screw Works, and both were represented for purposes of collective bargaining by UAW Local 771.

Petitioners were parties to collective bargaining agreements (CBA's) mandating disputes between the Company and employees concerning the interpretation or meaning of the contract be resolved through a four-step grievance procedure. In addition, the CBA's contained the following provisions:

- that an *earnest effort* should be made to settle differences concerning the meaning and interpretation of the CBA through the *grievance procedure* (Article IV, Section 1);
- that when all negotiations have failed through the grievance procedure, the union's *only recourse* is to strike (Article XVI);
- that arbitration is only available by mutual consent of the parties (Article XVI, Section 7).

Ring Screw Works discharged both Petitioners for cause—Groves for absenteeism and Evans for falsification of company records. Pursuant to the agreement, both exhausted the multi-step grievance process. In each case, the Company exercised its right to decline arbitration upon conclusion of the grievance procedure. Additionally, the union, by majority vote, declined to strike on behalf of the Petitioners.

Petitioners brought separate suits in state court alleging that they had been discharged without just cause in violation of their collective bargaining agreements. The Union joined each case as a co-plaintiff. Neither Petitioner disputed that the grievance procedures had not been

properly followed, nor alleged that the union failed to satisfactorily represent them throughout the process.

The employer successfully removed the cases to the United States District Court for the Eastern District of Michigan, Southern Division, which granted the Company's motion for summary judgment. The Court held that the grievance procedure in the collective bargaining agreements were the Petitioner's only recourse to resolve disputes concerning the CBA's.

The cases were consolidated on appeal, and the United States Court of Appeals for the Sixth Circuit affirmed. According to the court, Petitioners were bound by the results of the grievance procedure in their contracts, and could not circumvent that procedure by bringing a court action under § 301 of the Labor Management Relations Act of 1947. Petitioners' request for an *en banc* hearing before the Sixth Circuit was denied.

SUMMARY OF ARGUMENT

Congress made a clear, unequivocal and deliberate decision when enacting § 203(d) of the Labor Management Relations Act of 1947 to bind both employers and unions to the grievance procedures set forth in their collective bargaining agreements. The Sixth Circuit's decision must be upheld because it comports with expressed Congressional intent that the methods parties select to settle differences over the meaning of terms in a collective bargaining agreement are exclusive and final.

The Sixth Circuit's decision also complies with the "finality rule" developed by this Court in the *Steelworkers Trilogy*. *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise and Car Corp.*, 363 U.S. 593 (1960). According to the "finality rule," the national labor policy embodied in § 203(d) can only be effectuated "if the means

chosen by parties for settlement of their differences under the collective bargaining agreement is given *full play*." 363 U.S. at 566. The rule stresses that the system of self-government that our national labor policy seeks to promote will only be advanced if contract grievance procedures are deemed binding.

Moreover, public policy demands that parties adhere to the methods they select for settling disputes in the course of the collective bargaining process. The purpose of collective bargaining is to establish a private system of industrial self-government—a system of formal rules to identify disputes between parties, to process them, and to provide for resolution under the terms of the labor contract. The only role for the courts in such a private system is to guarantee that the parties do not circumvent the procedures for resolving disputes they *both* agreed to. Allowing the union to bypass the enforcement mechanism they agreed to during the bargaining process, and bring an action under § 301 of the LMRA, would completely undermine the give-and-take of the collective bargaining process.

The Court should encourage parties to stay committed to the rules for resolving disputes bargained for in their labor contracts. These rules set *uniform* standards for the workplace that benefit employers because they help avoid litigation. They also benefit employees because they create a working environment where all parties are subject to the same rules for settling disputes. For these reasons, the method for resolving disputes that the parties agreed to should be given *full play* by this Court.

ARGUMENT

I. THE LOWER COURT'S DECISION MUST BE UPHELD BECAUSE IT HONORS THE METHOD OF DISPUTE RESOLUTION THE PARTIES THEMSELVES AGREED TO

Section 203(d) of the Labor Management Relations Act of 1947 (LMRA) provides that "[f]inal adjustment by a *method agreed upon by the parties* is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." 29 U.S.C. § 173(d) (emphasis added). Congress' intent in enacting the LMRA was to insure that both employers and unions would be bound by the terms of their labor contracts.[3] The methods parties select to settle differences over the meaning of terms in a collective bargaining agreement are, accordingly, exclusive and final.[4]

Congress sought to foster adherence to collective bargaining agreements by giving the parties great flexibility in selecting the methods to resolve their differences.[5] Specific methods for dispute resolution, such as arbitration, were not prescribed by Congress.[6] Such methods

[3] The terms "contract" and "collective bargaining" agreement will be used interchangeably in this brief.

[4] This Court has permitted resort to federal court under § 301 to compel an employer to submit claims to an arbitrator under the grievance-arbitration provisions in a contract. However, the Court has not mandated federal court review under § 301 of *all* claims arising out of a collective bargaining agreement. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957).

[5] Unlike the Railway Labor Act, the National Labor Relations Act does not require parties to establish a system of adjudication of disputes over the meaning and application of collective bargaining agreements. Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Calif. L. Rev. 663 at 690 (May 1973).

[6] *Haynes* v. *U.S. Pipe and Foundry*, 362 F.2d 414 (5th Cir. 1966), quoting S. Rep. No. 105, 80th Cong. 1st Sess., 434-35 (1947).

would have limited the parties' options in contract negotiations. In exchange for this flexibility, the means chosen by the parties for adjustment of the dispute were to be considered final, exclusive, and binding, whether or not the parties so explicitly declared.[7]

This interpretation of § 203(d) has been supported by this Court. In the *Steelworkers Trilogy*,[8] this Court developed the "finality rule," which dictates that the national labor policy embodied in § 203(d) can only be effectuated "if the means chosen by the parties for settlement of their differences under the collective bargaining agreement is given *full play*." 363 U.S. 564 at 566 (emphasis added). In other words, the system of industrial self-government that our national labor policy seeks to promote will only be advanced if grievance procedures in a contract are deemed *binding*. 363 U.S. 574 at 580.

In *Republic Steel Corp.* v. *Maddox*, this Court upheld the "finality rule," emphasizing that parties to a contract should not circumvent the grievance procedures set forth in the collective bargaining agreement. 379 U.S. 650 (1965). In particular, this Court noted that:

> Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the "common law" of the plant. . . . A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. 379 U.S. at 653.

The *Maddox* decision also stressed one critical component of the "finality rule." This Court determined that court action is precluded unless a collective bargaining

[7] *Id.*

[8] *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise and Car Corp.*, 363 U.S. 593 (1960).

agreement *expressly states* that contract grievance procedures are *not* exclusive. That is, rather than presuming that contract procedures are not exclusive, as the Petitioner's here request, the *Maddox* court determined that the policy reasons behind the "finality rule" would be gutted unless the procedures were presumed to be *exclusive*.

In the present case, the parties agreed to a multi-step grievance procedure in their collective bargaining agreement that included the right to strike as its *final step*.[9] Both sides bargained for—and agreed to—this method of dispute resolution. Petitioners now try to circumvent this agreement by bringing a court action on the grounds that the grievance procedure was never intended to be final and exclusive. Given the Congressional preference for resolving disputes within the bounds of the contract grievance procedure—and in light of this Court's emphasis on the finality of contract grievance procedures—this argument is simply without merit.

II. ADHERENCE TO THE FINALITY RULE MAINTAINS THE INTEGRITY OF THE COLLECTIVE BARGAINING PROCESS

The purpose of collective bargaining is to establish a private system of industrial self-government to solve disputes in the workplace.[10] The contract signed at the end of the negotiating process—the collective bargaining agreement—memorializes a formal set of rules to identify

[9] Even though *Maddox* involved a collective bargaining agreement that contained a grievance-arbitration provision, the same public policy reasons behind the "finality rule" apply in cases, such as ours, where the procedure did not have arbitration as the final step in all cases.

[10] Donald S. McPherson, *Resolving Grievances: A Practical Approach*, (1983), at 4. ("The purpose of collective bargaining is to establish a framework to deal with the natural and divergent interests between employers and employees concerning wages, hours, and working conditions.").

disputes between the parties, to process them, and to provide for resolution under the terms of the agreement. It is a private system of industrial jurisprudence.[11]

Agreement is reached as part of an overall settlement process where both sides make concessions.[12] It is not an occasion for the employer to introduce rules into the workplace, but is, rather, a method by which *employees participate* in what would otherwise be a system of unilateral management.[13] The only role for the courts in such a private system of industrial self-government, is to guarantee that the parties utilize the process stipulated in the contract.[14]

Both the employer and the union, in the present case, reached an agreement through the give-and-take of the bargaining process. As parties that were certainly familiar with the process, each knew they were agreeing to an entirely private method by which to handle disputes concerning the agreement. The only conclusion that can be reached, then, is that the parties intended the grievance procedure included in the contract to be binding and final.

In addition, parties—such as these—know that the most important part of a labor contract is the enforcement mechanism.[15] Arbitration clauses are by far the most common provisions for final adjustment in labor agreements.[16] The strike/lockout provision included by

[11] Cox, *The Rights Under a Labor Agreement*, 69 Harv. L. Rev. 601 (1956).

[12] *Supra* note 10, at 5.

[13] Feller at 724.

[14] Here, the Petitioners exhausted the multi-step grievance procedure contained in the labor agreement, and now seek to start all over in federal court simply because they are unhappy with the results of the grievance procedure.

[15] *Supra* note 11.

[16] Basic Patterns: Grievance and Arbitration, (BNA), No. 1140, p. 51:5.

the parties in this agreement is a less common, but not obsolete, enforcement mechanism. Since collective bargaining agreements are arrived at through the give-and-take of arms length negotiating, it can be assumed that the union agreed to the strike/lockout clause in exchange for the employer's concession on another point. Allowing the union, in this case, to circumvent the grievance procedure by bringing a court action under § 301 would, thus, destroy the spirit of this bargaining process.

Finally, both parties benefit from the collective bargaining system because it sets *uniform* rules for the workplace.[17] Employers have a strong interest in developing a uniform (and private) mechanism for resolving disputes because it helps them avoid litigation.[18] Employees, on the other hand, benefit from a working environment that subjects all employees to the same rules for settling disputes. As part of this, though, both sides must commit to the labor contract and the agreed-to methods for resolving grievances. Respondent, Ring Screw Works, did just that—it processed both complaints according to the multi-step grievance procedure in the contract. Petitioners, however, decided to bypass the results of this procedure and bring a court action. This is simply not the method for resolving disputes agreed to by the parties, and is not the method for resolving disputes that should be given full play by this Court.

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[17] In *Maddox*, this Court noted that the "finality rule" preserves a "uniform and exclusive method for orderly settlement of employee grievances." 379 U.S. at 653.

[18] In 1989, there were 13,328 suits filed under the federal labor laws in federal court. *Reports of the Administrative Office of the U.S. Courts on Civil Cases Commenced by Nature of Suit*, Table C-2A (1989).

CONCLUSION

For the foregoing reasons, the Chamber urges this Court to uphold the decision of the U.S. Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., IN SUPPORT OF THE RESPONDENT

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The Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") respectfully submits this brief as amicus curiae in support of the respondent.[1]

[1] The written consent of each of the parties to the filing of this brief has been filed with the Clerk.

INTEREST OF THE AMICUS CURIAE

MVMA is a trade organization whose member companies build 94% of all motor vehicles produced in the United States and numerous other products. MVMA members include Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Manufacturing, Inc.; Navistar International Transportation Corp.; PACCAR, Inc.; and Volvo North American Corporation.

MVMA member companies employ over 1.2 million workers. A substantial proportion of those workers are represented by unions and covered by collective bargaining agreements. Virtually all of those collective bargaining agreements include grievance procedures; most provide for arbitration of disputes but some do not. Even those agreements that do provide for arbitration usually designate some significant issues as nonarbitrable. In several of the agreements, the Union and the employer have provided that if a nonarbitrable grievance is not resolved through the prescribed procedure, the Union is relieved of its obligations under the no-strike clause.

This case presents an issue of great importance to MVMA members and to other employers throughout the country whose employees are covered by collective bargaining agreements that exclude all or certain issues from arbitration. The court of appeals' holding that petitioners were bound by the result of the grievance process correctly captures the intent of the parties to such agreements and properly reflects federal labor policy. A decision to the contrary by this Court would greatly disrupt the labor relations of MVMA members.

STATEMENT

The Ring Screw Works Company produces screws, clamps and other fastening devices for the automobile industry. Its production and maintenance employees are represented for purposes of collective bargaining by Local No. 771 of the International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW), AFL-CIO. The Company discharged two of those employees—Arthur Groves and Bobby J. Evans—for excessive absenteeism and for falsifying company records, respectively.

The collective bargaining agreement between the Company and Local 771 includes a detailed, five-step grievance procedure for resolving any "difference[s] * * * between the Company and the Union, or its members employed by the Company, as to the meaning and application of the provisions of the agreement." At step one, the employee and his Union steward present the grievance to the foreman of the department. If the matter is not resolved at that stage, at step two the Manufacturing Manager or his designee hears the grievance. The third step of the grievance process involves Company Management and the Union's elected, six-employee Shop Committee. If there is still no resolution, at step four a Local or International Union Representative joins the Shop Committee in presenting the grievance to Plant Management. If the matter is not resolved at step four, the "Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. (This may include arbitration by mutual agreement in discharge cases only)." J.A. 51.

If a grievance is not resolved to the Union's satisfaction after the grievance process is exhausted, the Union is relieved from its contractual obligation not to strike.

The grievance procedure in the contract applicable to petitioner Evans provides that "[u]nresolved grievance[s] (except arbitration decisions) shall be handled as set forth in Article XVI, Section 7." J.A. 53. That section provides that "[t]he Union will not cause or * * * take part in any strike * * * during the term of this agreement until all negotiations have failed through the grievance procedure set forth therein." J.A. 69.[2]

Both Groves and Evans filed grievances contesting their discharge. The Union pursued the grievance through all of the steps of the grievance procedure, but then declined to exercise its right to strike. Instead, the two employees filed suit against the Company under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, joining the Union as an additional plaintiff. The complaint alleged that Groves and Evans had been discharged without just cause in violation of the collective bargaining agreement. It did *not* allege that the Union had breached its duty of fair representation.

The district court held that the employees were bound by the results of the grievance procedure, and that they could not bring a Section 301 suit against their employer unless they alleged that the Union had breached its duty of fair representation. Pet. App. 26a-27a. The court of appeals affirmed, relying on its previous decision in *Fortune* v. *National Twist Drill & Tool Division*, 684 F.2d 374 (6th Cir. 1982). "This court has previously concluded that failure to reach an agreement through a similar grievance procedure nevertheless produced a final decision and such procedure was deemed exclusive." Pet. App. 6a.

[2] The language of the agreement applicable to petitioner Groves differed somewhat from that of the agreement applicable to Evans, but as petitioners conceded below, "[t]he differences [between the two agreements] are immaterial to the issue in the case." Pet. App. 7a.

INTRODUCTION AND SUMMARY OF ARGUMENT

At first blush, this case might seem to involve an unusual collective bargaining agreement that does not provide for arbitration and unique circumstances in which discharged employees are left without a remedy. It might seem that the equities of those unique circumstances would justify a departure from the usual rules that (1) "[s]ince the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced," *Vaca* v. *Sipes*, 386 U.S. 171, 184 (1967); and (2) "[a]ny doubts" about whether the parties intended a grievance procedure to be the final and exclusive remedy must be resolved in favor of finality and exclusivity. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 659 (1965).

But that first impression would be seriously mistaken. In reality, this case presents an issue of great general importance that could arise under many collective bargaining agreements. A departure from the usual rules would be neither small nor justified. Instead, it would represent a fundamental restructuring of the bargain struck by thousands of employers and unions throughout the country. The federal courts would become forums to review countless disputes that employers and unions reasonably anticipated would be resolved solely by the means set out in the collective bargaining agreement.

MVMA has filed this brief to inform the Court of the general importance of the issues raised and the fact that acceptance of petitioners' arguments would have serious and disruptive consequences ranging far beyond the context of this particular case.

I. Federal Labor Relations Policy Requires That Employees, Employers And Unions Be Bound By The Results Achieved Through The Dispute Resolution Method Agreed Upon In Collective Bargaining.

Over the years, this Court has carefully considered the circumstances under which an employee, a union, or an employer can invoke the jurisdiction of a court to resolve disputes arising under a collective bargaining agreement. The Court has recognized that collective bargaining agreements are not the same as ordinary commercial contracts; they are more like constitutions that establish the relationship between the parties, the basic rights of those parties, and the system of industrial self-governance that the parties will follow. The rights those agreements define are limited by the contractual procedures prescribed for their enforcement. Even though at times an employee's claim may seem to be meritorious under the terms of an agreement and it also may seem that he is left without a remedy,[3] this Court has recognized the importance of giving effect to the final resolution of the contractual enforcement mechanism, provided that the process has not been tainted by fundamental unfairness. Petitioners' claim must be evaluated against the framework of this Court's decisions.

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, authorizes "[s]uits for violation of contracts between an employer and a labor organization representing employees." In *Smith* v. *Evening News Association*,

[3] A prime example is a case in which a union, acting in good faith, declines to take an employee's meritorious grievance to arbitration. The employee may be seen as lacking a remedy, but this Court has wisely held that the Union's decision is ordinarily not subject to judicial review. *Vaca* v. *Sipes*, 386 U.S. 171, 191-192 (1967).

371 U.S. 195, 196 n.1 (1962), the Court held that Section 301 permitted an individual employee to bring a suit against his employer alleging breach of a collective bargaining agreement when that agreement contained no dispute resolution procedure.

Section 301 must be read, however, in conjunction with Section 203(d) of the same statute, 29 U.S.C. § 173(d):

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

In *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 653 (1965), the Court held that an employee could not bypass the contractual grievance procedure by instead suing in court under Section 301:

> A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. * * * [I]t would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation "would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95, 103.

The Court acknowledged that if the collective bargaining agreement *expressly provided* that the grievance procedure was not the final and exclusive remedy, a suit would be permitted. 379 U.S. at 657-658. But absent such an express waiver, even the use of permissive language (*e.g.*, disputes "may" be resolved through the grievance proce-

dure) cannot be construed to imply that the grievance procedure is not final and exclusive. *Id.* at 658-659. "Any doubts must be resolved against such an interpretation." *Id.* at 659.

Employees are not only required to pursue their disputes through the contractual grievance procedure, but they are also bound by the results achieved through that process. *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Vaca* v. *Sipes*, 386 U.S. 171 (1967). Unless it can be shown that the employer repudiated the contract's remedial provisions or that the union violated its duty of fair representation, the result reached through the grievance process is final and conclusive. *DelCostello* v. *Teamsters*, 462 U.S. 151, 163-164 (1983); *Bowen* v. *United States Postal Service*, 459 U.S. 212, 220-222 (1983); *Vaca* v. *Sipes*, 386 U.S. at 185.

These cases give effect to the important policy reflected in Section 203(d). As this Court has explained, the parties to a collective bargaining agreement are expected not merely to establish concrete terms of employment, but to set up a system for dealing with the disputes that inevitably will arise in the employment relationship:

> Fundamental to federal labor policy is the grievance procedure. It promotes the goal of industrial peace by providing a means for labor and management to settle disputes through negotiation rather than industrial strife. Adoption of a grievance procedure provides the parties with a means of giving content to the collective-bargaining agreement and determining their rights and obligations under it.

Bowen v. *United States Postal Service*, 459 U.S. at 225 (citations omitted). Thus, the "congressional policy [reflected in Section 203(d)] 'can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.' " *Hines* v. *Anchor Motor Freight*, 424 U.S. at 562, quoting *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566 (1960).

In considering petitioners' claim, it is essential to bear in mind that Section 203(d) does *not* provide for arbitration as the preferred method of resolving disputes. To the contrary, when it enacted Section 203(d), Congress expressly rejected the notion that parties should be compelled to arbitrate disputes. II NLRB, *Legislative History of the Labor Management Relations Act, 1947*, at 1520 (Reprint ed. 1985) (Statement of Senator Taft). Instead, Congress declared that the "method agreed upon by the parties * * * for settlement of grievance disputes"—whether that method is arbitration or a grievance procedure without arbitration—must be given full effect. 29 U.S.C. § 173(d).

The critical question in this case is therefore easy to state: what method did the parties intend would be used to settle grievances?[4] Did they intend that the Union's right to strike would be the only remedy if a dispute is not resolved through the grievance process? Or did they intend that the Union be given the choice between striking or going to court—and that individual employees be permitted to go to court on their own even if the Union makes a good faith determination not to strike or to pursue the matter further?[5]

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[4] Petitioners tacitly acknowledge that this is the critical question by agreeing that the Court would be required to give effect to a grievance procedure that was final and binding if such an intent is clearly expressed. Pet. Br. at 8.

[5] We, of course, acknowledge that if a decision not to strike or some other aspect of a union's handling of a grievance constitutes bad faith and a breach of the duty of fair representation, a Section 301 suit against both the union and the employer would be permitted. *Hines* v. *Anchor Motor Freight*, 424 U.S. at 571.

Petitioners would have this Court adopt a presumption that in cases like this one the parties did not intend to preclude enforcement in court unless they clearly expressed the contrary intention. But, as we point out below, there would be no basis in fact for such a presumption. Instead, it would contravene the intent of collective bargaining parties and seriously disrupt their settled expectations.

II. Petitioners' Argument, If Accepted, Would Have A Substantial, Unforeseen And Disruptive Impact On Collective Bargaining Agreements Affecting Thousands Of Employers And Millions Of Employees.

The collective bargaining agreement involved in this case included a grievance procedure but did not require arbitration of any dispute. Instead, the Union had the express right to strike over unresolved grievances. That arrangement is relatively uncommon, but certainly not unknown. According to data compiled by the federal Bureau of Labor Statistics, 3.3% of 1,550 surveyed collective bargaining agreements covering 1,000 or more workers contained no provision for arbitration of disputes. U.S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Major Collective Bargaining Agreements, January 1, 1980* [hereinafter "*BLS Study*"], at 113 (1981).

The question presented by this case cannot, however, be regarded as affecting only that relatively small percentage of labor contracts. The issue in this case is whether a Section 301 suit can be brought to enforce the terms of a collective bargaining agreement that includes a comprehensive grievance procedure but does not provide for final and binding arbitration of all unresolved grievances.[6] That

[6] In this case, the agreement authorized the Union to strike over unresolved grievances. J.A. 34, 69. Although it is quite common

(Footnote continued on following page)

issue can and will arise under a very large number of collective bargaining agreements. According to Bureau of Labor Statistics data, over 31% of agreements surveyed either do not provide for arbitration or designate certain substantial issues that are specifically excluded from arbitration. *BLS Study* 113.[7] Those agreements covered over 40% of the 6,600,000 employees involved in the survey. *Ibid.* A substantial majority of collective bargaining agreements in the survey (58% of agreements covering 70% of employees) either did not prohibit strikes or—far more commonly—included specific exclusions from the no-strike obligation. *Id.* at 114. These data reflect a common phenomenon in collective bargaining: the parties very often specifically exclude certain issues from arbitration or limit the arbitration clause to certain issues such as employee discharge. Because the no-strike clause is regarded as the "quid pro quo" for the arbitration clause, when issues are excluded from arbitration the parties frequently agree that strikes over those issues are also excluded from the no-strike clause.

[6] *continued*
for collective bargaining agreements to relieve unions from their obligations under no-strike clauses when there is a dispute over a nonarbitrable issue, the fact that the agreement permits a strike in these circumstances is not of critical importance. This case would surely have been decided the same way had the agreement included a comprehensive grievance procedure that did not provide for arbitration and also did *not* permit the Union to strike over unresolved grievances.

[7] The Bureau of National Affairs maintains a database of 400 collective bargaining agreements. According to its data, specific issues are excluded from arbitration in 36% of those contracts. 2 Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts* 51:5 (1990). In 17% of the contracts, the union's no-strike obligation is expressly lifted after the grievance process is exhausted, or if the issue in dispute falls outside the grievance procedure, or if the employer declines to arbitrate the issue. *Id.* at 77:1.

What Professor David Feller found when he wrote his classic article on collective bargaining agreements in 1973 is still true today: examples abound of major agreements that exclude significant issues from arbitration.[8] For example,[9] the agreement between General Motors Corporation and UAW covering approximately 335,000 production and maintenance employees expressly excludes from arbitration issues involving production standards, establishing wages, and several benefit programs. 1 Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts* [hereinafter "*BNA Contracts*"] at 21:23. As to some of those issues, the Union is permitted to strike after it exhausts the contractual procedure:

> The Union will not cause or permit its members to cause * * * any strike or stoppage * * * in [any] case on which the [Arbitrator] shall have ruled, and in no other case on which the [Arbitrator] is not empowered to rule until after negotiations have continued for at least five days a. the third step of the Grievance Procedure.

Id. at 21:40.

[8] Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Calif. L. Rev. 663, 792-794 (1973) [hereinafter, "Feller, *General Theory*"].

[9] The examples we cite were found among the seven private-sector collective bargaining agreements printed in full in 1 Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts* chap. 20 (1990). Obviously, a more comprehensive review of labor contracts would identify many more examples. One of the seven agreements in the BNA volume—that between Ohio Bell Telephone Company and the Communications Workers of America, covering 10,000 employees—operates very much like the agreement involved in this case. It includes a grievance procedure that does not provide for arbitration (*id.* at 22:10) and it does not prohibit strikes over unresolved grievances.

The labor agreement between General Electric Company and the International Union of Electrical Workers (covering 42,000 hourly and salaried employees) includes a lengthy list of items that can be submitted to arbitration only if the company consents. *Id.* at 23:19.[10] Among the issues excluded are rates of pay, job assignments, incentive rates, discipline or discharge of probationary employees and issues involving pension and benefit plans. *Ibid.* Again, the no-strike clause of the agreement does not prohibit the Union from striking over those issues after it exhausts the applicable steps of the grievance procedure:

> There shall be no strike * * * of any kind in connection with any matter subject to the grievance procedure * * * unless and until all of the respective provisions of the successive steps of the grievance procedure * * * shall have been complied with by the Local and the Union. The foregoing exception will not apply if * * * the matter is submitted to arbitration.

Id. at 23:16-17.

The agreement between Boeing Company and the International Association of Machinists covering 42,500 production and maintenance employees (*id.* at 20:33) contains an unusual clause providing "that any dismissal or suspension of an employee who has committed a sex crime victimizing a child or children * * * shall not be subject to the grievance and arbitration procedure of this Article 19."[11]

[10] The agreements between Ring Screw and the UAW similarly provided for arbitration of discharge cases only upon the consent of the company. J.A. 17, 51.

[11] Professor Feller describes several similar examples that he found in 1973, including contracts of the Bell System, Allen-Bradley Co., General Motors and United States Steel. Feller, *General Theory* at 793-794.

The question presented by petitioners can be expected to arise with some frequency under contracts which exclude specific matters from arbitration.[12] Like the agreement involved in this case, none of the sample agreements mentioned above specifically provides that the grievance procedure (or the strike remedy) shall be final and binding as to matters excluded from arbitration. Thus, under those agreements, controversies will arise in which employee grievances will not be subject to arbitration and no further contractual remedy (except perhaps the right to strike) will be available.

Because it is clear under federal law that the courts should give effect to whatever dispute resolution method the parties have agreed upon, the question these contracts present is what did the parties intend by excluding specific matters from arbitration or by providing for a grievance procedure without mandatory arbitration? For example, by excluding claims involving the discharge of probationary employees from the arbitration clause, did General Electric and the Electrical Workers intend that discharge claims involving probationary employees should be heard only in court in the form of Section 301 actions? Or did they intend that management decisions to discharge probationary employees should not be reviewable at all? By excluding production standards and special benefits policies from the arbitration clauses of their contracts, did General Motors and the Union representing its employees intend that any disputes would be resolved through Section 301 suits, or that the results of the grievance process would be final and binding?

[12] Our assertion that the question presented by petitioners will arise under contracts which exclude specific matters from arbitration is not at all speculative. The collective bargaining agreement between one MVMA member and the union representing its security guards includes a comprehensive grievance procedure that provides for arbitration of most disputes. See *Agreement Between General Motors Corporation and the International Union, United Plant Guard Workers of America (UPGWA)* 4-12 (1984). But it specifically excludes from arbitration disputes over Company "policies which extend certain benefits or privileges to eligible salaried employes." *Id.* ¶ 44. As to those policies, a special grievance procedure applies. *Id.* ¶ 47. To date, employees have filed two Section 301 suits against General Motors involving disputes over Company policies covered by ¶ 44. In both cases, employees pursued their grievances through the special procedure provided by ¶ 47, but sued because they were dissatisfied with the results of that procedure. See *Alford* v. *General Motors Corp.*, No. 88-CV-74720-DT (E.D. Mich. 1990); *Vargo* v. *General Motors Corp.*, No. 88-CV-60149-AA (E.D. Mich. 1989). The district court dismissed both suits, and a consolidated appeal is now pending in the Sixth Circuit.

As Professor Feller has emphasized, the answer to these questions is plain:

> [T]he contractual obligations assumed by the employer are limited to those enforceable through the grievance procedure. * * * This is shown most clearly in those cases in which the parties seek to make nonadjudicable and, hence, unenforceable, a rule set forth in the agreement. They normally do so by providing that a claim for violation of the rule shall not be arbitrable.

Feller, *General Theory* at 792-793.[13] Thus, as to contracts in which certain probationary employees can pursue discharge claims through the grievance procedure but not to arbitration, "[t]he parties plainly mean that such an employee shall have the right to have his grievance con-

[13] Professor Feller's expertise on the nature and intent of collective bargaining agreement terms derives not only from his academic research, but from his previous twenty years as a labor lawyer representing unions, including service as General Counsel of the Steelworkers and of the Industrial Union Department of the AFL-CIO. Feller, *General Theory* at 856 n.718.

sidered by higher management but that, if it agrees with the discharge, no one shall have the right to reverse that decision." *Id.* at 793.

Similarly, by providing in their contract that production standards are not subject to arbitration, General Motors and the UAW "plainly do not mean * * * [such] disputes * * * shall be adjudicable in other forums; they mean that they shall not be adjudicable at all." *Id.* at 794. By excluding a specific matter from arbitration, the parties to a collective bargaining agreement do not intend that a dispute over such a matter "shall be heard judicially, but that it shall not be heard at all." *Ibid.* That intention "is clearest when the agreement is an 'open' one in which the limitation on the issues that may be arbitrated is coupled with a comparable limitation on the no-strike clause so as to permit resolution of the dispute by economic contest." *Ibid.*

Quite simply, these are matters as to which management believes it is so important that it have unfettered discretion that it insists at the bargaining table that they be excluded from arbitration even though that insistence may make it harder to obtain agreement and might require concessions in other areas.[14] As a Department of Labor study of arbitration provisions found:

> Some exclusions [from arbitration provisions] undoubtedly were intended to preserve certain management prerogatives, others to preserve union prerogatives. * * * It seems reasonable to assume, however, that underlying many exclusions was a strongly held belief of one or both parties that the issue in question was too important or too subtle to be entrusted to a decision of a third party.

[14] These subjects may also raise issues which the union believes would be inappropriate or disadvantageous for third party review. See note 16, *infra*.

U.S. Department of Labor, *Major Collective Bargaining Agreements: Arbitration Procedures* 11 (1966). See also F. Elkouri & E. Elkouri, *How Arbitration Works* 96-97 (4th ed. 1985) ("There are some matters, too, which are so delicate or are considered to belong so intimately to one or the other of the parties, that they are not too readily submitted to arbitration. * * * Management naturally hesitates to submit to arbitration issues involving its normal prerogatives in the conduct of the business"); S. Slichter, J. Healy, & E. Livernash, *The Impact of Collective Bargaining on Management* 756-760 (1960).

Federal labor policy requires courts to enforce the intent of the parties that certain labor relations decisions not be subject to third-party review. As Section 203(d) provides, "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes." 29 U.S.C. § 173(d). Moreover, "[s]ince the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced." *Vaca* v. *Sipes*, 386 U.S. at 184. Because the usual contractual device for making an issue unreviewable by *any* third party (including a court) is to exclude that issue from arbitration, when matters are expressly excluded from arbitration they should also be presumed to be unreviewable by a court in a Section 301 proceeding unless the parties clearly express the (unusual) contrary intent.[15]

[15] On occasion, parties to a collective bargaining agreement will exclude an issue from arbitration with the intent that enforcement

(Footnote continued on following page)

All that is left of petitioners' argument, then, is a claim that when *all* issues are excluded from arbitration, and the Union's only remaining contractual remedy after exhausting the grievance procedure is to go on strike, the Court should establish a broad exception to the general understanding and adopt a presumption that the parties intended to permit enforcement in a Section 301 action unless they expressly provide to the contrary. If their argument is based, as it should be, on how best to effectuate the intent of the parties and to give effect to the "method agreed upon * * * for settlement of grievance disputes," it is far from the mark.

It defies common sense to assume—in an environment in which arbitration is the norm and the exclusion of specific issues from arbitration means that the parties wish to preclude any third party review of those issues—that by excluding all issues from arbitration the parties intended those same issues to be adjudicable in court. It certainly makes no sense to assume that the parties who rejected use of the relatively inexpensive, expert forum of arbitration intended that disputes would be resolved through the costly and less reliable method of Section 301 litigation. Instead, the logical assumption is that the parties agreed

[15] *continued*
will be in the courts. When they do so, they make that intent explicit. See, *e.g.*, the no-strike/no lockout clause of the contract between Boeing and the Machinists, 1 *BNA Contracts* at 20:32 ("Any claim by either party that the other party has violated this Article shall not be subject to the grievance procedure or arbitration provisions of this Agreement, and either party shall have the right to submit such claim to the court"); Feller, *General Theory* at 796-797 n.517 (a clause in a contract between Douglas Aircraft and UAW dealing with rights to patents on employee inventions was not subject to arbitration, but the parties specified that "cause[s] of action arising out of such patent contract[s]" can nevertheless be brought in court).

to be bound by the result of the grievance process, with no further review by any third party. It is most likely that at the bargaining table either the employer insisted that its decisions not be subject to third party review and prevailed on that issue (almost certainly by agreeing to substantial concessions in other areas), or that the Union preferred the strike remedy to arbitration and insisted and prevailed on its position.[16]

Once again, Professor Feller explains that the intent of the parties to such contracts is that disputes not be adjudicable by *any* third party—including arbitrators, judges and lay juries—and that the parties are left to the process of negotiation and ultimately to their economic weapons. Feller, *General Theory* at 846-847. "Where the parties have agreed, for whatever reason, that the ultimate recourse shall be a test of economic strength * * *, it should require a clear showing that Congress intended to overrule that intention before a system of impartial adjudication, either judicial or arbitral, is imposed on parties who have shown that they do not desire it." *Id.* at 847.

What petitioners ask this Court to do is just that: to override the intent of the parties and establish an artificial

[16] It would be a mistake to assume that only management could favor an agreement that foreclosed arbitration and provided that the strike remedy would be available for unresolved disputes. As Professor Feller points out (*General Theory* at 846 & n.694), when unions are in a position of strength and believe they can get their way by striking or threatening to strike, they insist upon such arrangements. Thus in *Associated General Contractors* v. *Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), an employer brought a Section 301 suit when the union threatened to strike over a dispute about the wage scale applicable to certain work. The Teamsters contract—at the Union's insistence—provided that the strike remedy rather than arbitration would be available to deal with unresolved grievances.

presumption that parties intended to permit judicial review of the results of grievance procedures unless the contract clearly states otherwise. Such a presumption—which would apply to contracts already negotiated—would be grossly inequitable. It would give petitioners and others similarly situated the right to obtain third party adjudication even though they bargained away that right in return for other concessions when they agreed to a contract without arbitration. That result would be contrary to both the intent of the parties and sound federal labor policy.

III. Federal Labor Policy Is Best Served By Not Permitting Section 301 Suits Over Nonarbitrable Labor Disputes.

Petitioners characterize the court of appeals' decision as "holding that the strike is [their] exclusive remedy for an alleged employer breach of the collective bargaining agreements." Pet. Br. 15. But what the court actually held was that the multistep grievance procedure was the exclusive and final means for resolving disputes under the Agreement. Pet. App. 2a-3a. To be sure, if that grievance procedure failed to resolve a dispute, the Union could call a strike. But there can be no doubt that the parties expected that most disputes would be resolved through the grievance procedure, not through strikes.

In considering petitioners' contentions, it is important to bear in mind that the grievance procedure prescribed in the Ring Screw/UAW contract is an appropriate and meaningful dispute resolution mechanism. The employees were represented by competent, sophisticated Union officials at each step of the process. They were able to state their case first to their foremen, then up the corporate ladder in several stages to high level company management. At each level, management representatives had the

authority to grant the grievance and reinstate the employees.

Grievance procedures of this type are not merely waystations on the road to arbitration. They provide a significant opportunity for employees and unions to present their grievances and have them resolved. In fact, many more disputes are resolved at the various steps of grievance procedures than are resolved through arbitration. This Court noted in *Vaca* v. *Sipes* that "less than .05% of all written grievances filed during a recent period at General Motors required arbitration, while only 5.6% of the grievances processed beyond the first step at United States Steel were decided by an arbitrator." 386 U.S. at 192 n.15. Another study of three large plants found that the employer granted in whole or in part 65% of all grievances and that less than 2% went to arbitration. S. Slichter, J. Healy, & E. Livernash, *The Impact of Collective Bargaining on Management* at 734-735. "The great majority of grievances are generally settled at the first stage; were it otherwise, higher management and union officials could easily become overburdened with the task of reviewing complaints." A. Cox, D. Bok, & R. Gorman, *Labor Law* 702 (10th ed. 1986).

To argue that a grievance procedure such as the one provided for in the Ring Screw/UAW agreements is not meaningful would be to argue that collective bargaining itself is not meaningful. As Dean Harry Shulman put it, the nature of the collective bargaining agreement—as a system of governance as much as an enumeration of rights and obligations—"makes collective bargaining an unending process in labor relations, and * * * makes the grievance procedure the heart of the collective agreement." III *Conference on Training of Law Students in Labor Relations* 669 (1947), quoted in F. Elkouri & E. Elkouri, *How Arbitration Works* 153-154 (4th ed. 1985). To disregard the

effectiveness and efficiency of the grievance procedure would be to disregard "the heart of the collective agreement" and to overlook the process by which the vast majority of disputes are actually resolved.

Grievance procedures such as the one at issue in this case are capable of handling a very large volume of workplace disputes. One study found that 28% of blue-collar union employees filed grievances during a two-year period. R. Freeman & J. Medoff, *What Do Unions Do?* 209 (1984). That figure almost certainly understates grievance filings because many of those employees may have filed more than one grievance during that time. Another study of three union plants found grievance rates ranging from 22.0 to 49.8 grievances per 100 employees per year. S. Slichter, J. Healy, & E. Livernash, *The Impact of Collective Bargaining on Management* at 734-735.

Extrapolating from that data, it is clear that millions of employee grievances are filed each year.[17] The great majority of those are settled without any need for arbitration. Available data do not permit an accurate estimate of the number of grievances that are not subject to arbitration and are thus potential Section 301 suits. But it is clear from the fact that at least 31% of agreements either do not provide for arbitration or exclude certain

[17] There are now approximately 11.7 million private sector employees covered by union contracts. U.S. Department of Labor, Bureau of Labor Statistics, Bull. 90-59, Table 2 (Feb. 7, 1990). Approximately 98.6% of the employees are covered by agreements with grievance procedures. *BLS Study* at 113. If—according to the lowest estimate—28% of those employees filed a grievance every 2 years (14% per year), 1,600,000 employees would file grievances each year. If the higher estimate of 49.8 annual grievances per 100 employees were correct, there would be 5,750,000 grievances per year.

issues from arbitration that there would be many thousands of such grievances each year.

The parties to collective bargaining agreements are entitled to select the method by which those thousands of grievances will be resolved. When parties have selected an efficient grievance procedure or other mechanism for resolving disputes, the Court should assume that they intended it to be exclusive, final and binding and did not intend to burden themselves and the courts with Section 301 litigation unless their agreement is clearly to the contrary.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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